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ABSTRACT

This guide, published by the United States Commission on Civil Rights, explains current Federal Laws that prohibit sex discrimination, as well as policies and regulations of Federal agencies prohibiting sex discrimination. The booklet describes the major provisions of each law and regulation and the complaint procedures established under each. This booklet is divided into the following sections: (1) Employment Discrimination; (2) Federal Programs; (3) Federal Regulatory System; and (4) Federal Advisory and Informational Programs. A preface, an introduction, a glossary, and three appendices are also included. (Author/JLL)

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A GUIDE TO FEDERAL LAWS AND REGULATIONS PROHIBITING SEX DISCRIMINATION

CLEARINGHOUSE PUBLICATION NO. 46
UNITED STATES COMMISSION ON CIVIL RIGHTS
July 1976
(revised)

U S DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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The United States Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 to:

- Investigate complaints alleging denial of the right to vote by reason of race, color, religion, sex, or national origin, or by reason of fraudulent practices;

- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;

- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;

- Serve as a national clearinghouse for information concerning denials of equal protection of the laws because of race, color, religion, sex, or national origin; and

- Submit reports, findings, and recommendations to the President and the Congress.

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A GUIDE TO

FEDERAL LAWS AND REGULATIONS

PROHIBITING SEX DISCRIMINATION

United States Commission on Civil Rights
Clearinghouse Publication 46

Revised July 1976

GPO 4

PREFACE

In 1972 the jurisdiction of the United States Commission on Civil Rights was expanded to include discrimination on the basis of sex.

Over the last 10 years, Congress has passed several measures, the President has issued Executive orders, and several Federal agencies have promulgated regulations--all of which prohibit discrimination on the basis of sex. This publication is intended to inform individuals of their rights under the law and to describe the practical steps they may take to protect their rights.

This booklet explains current Federal laws that prohibit sex discrimination, as well as policies and regulations of Federal agencies prohibiting sex discrimination. The booklet describes the major provisions of each law and regulation and the complaint procedures established under each.

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INTRODUCTION

The Declaration of Independence proclaims that all men are created equal. Unfortunately, the word "men" has been taken too literally, resulting in the principle that women are created unequal. With this practice the rule, rather than the exception, the issue of the legal rights of women in American society has been debated throughout the history of our country. Though these debates have focused mainly on political and employment rights, discrimination against women has been manifested also in such areas as public accommodations and facilities, public education, criminal laws and the administration of justice, tax and retirement benefits, consumer credit, mortgage finance, insurance, property rights, and rental and finance contracts. In short, discrimination against women exists in every facet of American society.

Women thus have been confined to a different, and by most standards, inferior status. They have been stigmatized historically as an inferior class; and discrimination against women, though often different in kind and intensity, has been as pervasive as the discrimination experienced by racial, ethnic, and religious minorities in this country. Although numerically women are a majority of the population,

they, like minorities, lack the political power to remedy the discriminatory treatment they are accorded in the law and in American society.

This inferior status, tolerated and accepted as natural throughout our country's history, is reflected in our legal system. In common law, women were accorded few if any rights, none of which were substantial. For instance, women were not allowed to enter into contracts, hold property, or maintain legal action. In fact, it was not until 1920 that women of all races finally acquired the right to vote through passage of the 19th amendment.

The women's movement of the 19th century addressed itself to a wide variety of issues in its attempt to eliminate discrimination against women. Nineteenth century feminists spoke out and demonstrated against restrictive marriage and family laws and against discrimination in education, employment, property rights, and reproductive freedom, to name but a few. Throughout these years, feminists perceived the need for political power and influence for women. They understood that without the basic right to participate in the political process through exercise of the elective franchise, alterations in women's status would depend solely on the good will of the men in power and would be slow in coming. By the end of the

century, therefore, the struggle for women's rights concentrated on obtaining the right to vote as a first step toward obtaining full equality for women under the law. While the right to vote is basic to the achievement of other rights, the 19th amendment could not cure all ills and alter the inferior status decreed by American society for women. Consequently, "woman's place" as subordinate to man was and still is, to some extent, reflected in existing laws and practices.

During recent years, outspoken feminists have compelled the courts and legislatures to view the role and status of women from a different perspective. Through the courts, they have demanded equal protection of the laws and vindication of their fundamental constitutional rights. The achievement of equal opportunity for women, however, is still blocked by political, social, economic, and legal barriers, many of which are sanctioned by the law.

Some efforts have been made at both the Federal and State levels to offer relief from discriminatory practices. While these developments represent one step toward the protection of the equal rights of women and men, they are only initial steps, piecemeal in nature and with very limited scope. This is what makes the passage of the equal rights amendment (ERA) so imperative. The amendment reads:

Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

Passage of the equal rights amendment would provide the constitutional guarantee of equal protection of the law for both women and men, which has not been guaranteed by any other means. The Supreme Court, for example, has not ruled that sex, like race, is a "suspect classification" and, thus, has not extended the full protection of the 14th amendment to women. Although piecemeal revision of Federal and State laws would accomplish essentially the same goal as the equal rights amendment, the process would require an inordinate amount of time, precision, planning, and legislative effort. The ERA will create a uniform national standard and mandate for such legislative reform because it will establish the principle that all persons, regardless of sex, must be treated as individuals rather than as representatives of the actual or alleged characteristics of a group; although the amendment applies only to governmental, not private, action.

Thus, laws which confer a benefit or obligation on one sex would be revised to cover both sexes. This would include, for example, extending to men the beneficial provisions of protective labor legislation, such as those which provide lounge facilities and rest periods for women workers only. Laws that provide of alimony and child support to the wife in a divorce settlement would be revised so that the criterion for granting such support would be the ability of each spouse to make such payments, rather than the individual's sex. Laws which restrict opportunity to one sex, and thus deny opportunity to the other sex, would be invalidated. "Domicile" laws in many States, which prohibit a wife from maintaining a legal residence different from that of her husband and thus limit her ability to register to vote, would not be allowed. Protective labor laws which restrict the number of hours women are permitted to work and the amount of weight they are permitted to lift would be invalidated.

Laws creating age distinctions on the basis of sex, such as those which define legal adulthood differently on the basis of sex or establish a different age of consent to marry without parental permission for women and men, for example, would be unconstitutional.

Laws that distinguish between women and men on the basis of alleged physical differences, such as those preventing women from engaging in military combat, would be invalidated, unless such laws are based on characteristics that apply to women but not to any men, or on characteristics of men but not of any women. Laws governing the determination of paternity, for example, would not be invalidated.

Laws providing for the separation of the sexes will also be invalidated, except as such laws maintain the public interest or the individual's right to privacy. In the case of public restrooms, for example, the individual's right to privacy would take precedence.

EMPLOYMENT DISCRIMINATION

Sex discrimination in employment may be overt and covert. Overt discrimination exists where specific personnel policies deny equal employment opportunity on the basis of sex. Such policies may include establishment of different job qualifications for women and men performing identical or similar jobs, establishment of lower wage scales for women performing the same or similar functions as men, or advertising job openings for men only or women only.

Covert discrimination need not be intentional but still serves to deny equal employment opportunity on the basis of sex. Such discrimination manifests itself in systems, patterns, practices, and policies that may appear to be sex-neutral but result in discrimination based on sex. Such discrimination may be difficult to discover; an examination of the effects of employment policies and patterns is essential. Covert sex discrimination may result from the establishment of prerequisites for employment, such as, height, that effectively disqualify most women and that are not, in fact, bona fide occupational qualifications.[1] Recruiting methods and sources may also result in covert discrimination if, for example, a company recruits new employees from predominantly male colleges or through an

informal network of contacts who are predominantly male. The discriminatory effect of such policies and practices is to limit women's access to skilled, lucrative, and creative employment.

For any discriminatory action, policy, or practice there may be several possible avenues of redress. Filing a complaint under one law or regulation will not usually prevent filing a complaint under another. Therefore, if an individual or a group of persons believes that they have been subjected to sex discrimination, they should examine all possible means for correction. Even where there is uncertainty about the applicability of a law or procedure to a specific instance of discrimination, the victim of such discrimination should consider using the complaint procedure.

Complaints may serve several purposes. First, the complaint procedure may be the appropriate remedy for discriminatory actions, practices, or policies. Second, complaints alert agencies and other responsible parties to possible patterns and practices of discrimination; this aids the enforcement agency in determining which public or private institutions, organizations, or industries should be subject to compliance reviews and the possibility of sanctions.

Laws prohibiting discrimination often have complaint procedures that do not allow the complainant a right to a hearing. When there is no right to a hearing, a complainant may only participate in the resolution at the discretion of the agency or other responsible party. Though the complaint is a potentially powerful tool, it does not necessarily afford the complainant the right to have an individual complaint resolved.

Beyond the complaint procedure prescribed by each law or set of regulations, there are additional avenues of redress in an employment discrimination case. The most important are those prescribed by Title VII of the Civil Rights Act of 1964. These procedures grant the complainant the right to a hearing and to redress of his or her grievance, thereby permitting the complainant the most involvement in the resolution of the complaint and probably producing the most satisfactory results for the complainant. The Equal Employment Opportunity Commission (EEOC), which is responsible for enforcement of Title VII, is the major Federal protector and enforcer of nondiscrimination in employment. If there is a violation of Title VII, in addition to a violation of a statute that prohibits employment discrimination on the basis of sex in a

particular area, the complainant should use both complaint procedures.

While EEOC has jurisdiction to litigate in private employment discrimination cases under Title VII, the Department of Justice is the main litigation arm of the executive branch of the Federal Government. Under certain circumstances, the Attorney General of the United States is authorized to file suits charging a pattern and practice of discrimination. Where this is the case, it has been noted in specific sections of this handbook.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972: EQUAL EMPLOYMENT OPPORTUNITY IN PRIVATE EMPLOYMENT AND STATE AND LOCAL GOVERNMENT

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972[2] prohibits discrimination in employment in Federal, State, and local government and in the private sector on the basis of race, color, religion, sex, or national origin. Enforcement of Title VII in the private sector and in State and local government is generally the responsibility of the Equal Employment Opportunity Commission (EEOC); for court action with respect to State and local government, enforcement is the responsibility of the Department of Justice. Equal opportunity in Federal employment is the responsibility of the U.S. Civil Service Commission.[3]

The EEOC was established to investigate, resolve, and if necessary litigate complaints of alleged discrimination. EEOC also encourages and helps employers to establish voluntary compliance programs. The guidelines issued by EEOC are the standards used to determine whether there is compliance with Title VII.[4]

Coverage

Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin by all private employers of 15 or more persons, all public and private educational institutions, State and local governments, public and private employment agencies, labor unions with 15 or more members, and joint labor-mangement committees for apprenticeship and training. Religious institutions, however, may be exempt from the provisions of Title VII where the employment of persons of a particular religion is necessary to carry out the purposes of the institution.

Examples of discrimination forbidden by Title VII include: maintenance of sex-segregated classified advertising ("help wanted-male" and "help wanted-female"); establishment of different retirement ages for men and women (62 for women and 65 for men); maintenance of separate promotion ladders for women and men; or refusal to treat pregnancy as a temporary disability.

What Is Required

State and local governments, private employers, and labor unions must provide to all persons an equal opportunity to participate in training and apprenticeship programs, to be hired and promoted into all types of jobs

under the same terms and conditions of employment, and to receive all available benefits of those jobs.

Complaint

A complaint may be filed with the EEOC by any person (or her or his representative) who believes herself or himself, or any specific group of persons, to be the subject of discrimination prohibited by Title VII. The written complaint should be filed with:

Equal Employment Opportunity Commission
2401 E St., N.W.
Washington, D.C. 20506

or with any of the seven regional offices:

EEOC
Citizens Trust Bldg.
Suite 1150
75 Piedmont Ave., N.E.
Atlanta, Ga. 30303
(404) 526-6991

EEOC
600 South Michigan Ave.
Rm. 611
Chicago, Ill. 60605
(312) 353-1223

EEOC
1100 Commerce St., Rm.7B11
Dallas, Tex. 75242
(214) 749-1841

EEOC
601 East 12th St., Rm. 113
Kansas City, Mo. 64106
(816) 374-2781

EEOC
Federal Office Bldg.
Rm. 4000
26 Federal Plaza
New York, N.Y. 10007
(212) 264-3640

EEOC
124 N. 4th St.
Philadelphia, Pa. 19106
(215) 597-7784

EEOC
300 Montgomery St.
Suite 740
San Francisco, Calif. 94104
(415) 556-1775

The complaint must be filed within 180 days of the alleged discrimination. Discrimination complaints received by EEOC are referred for 60 days to State and local agencies with similar jurisdiction and enforcement powers. The procedures of these agencies and their requirements for affirmative action vary in minor ways, but, if satisfactory remedies are not achieved, the complaints return to EEOC for resolution.

EEOC will investigate where a complaint has been made or, on some occasions, where there are other indications that employment discrimination exists. After EEOC has found reasonable cause to believe that discrimination exists, the Commission informally attempts to bring the party responsible for the discriminatory practices into compliance with Title VII.

Enforcement and Sanctions

In addition to investigations initiated in response to a complaint, EEOC may conduct industry-wide compliance reviews. If EEOC finds discrimination by State or local government that cannot be corrected informally, it may refer the matter to the Attorney General of the United States. In all other cases, EEOC may go directly to Federal court to enforce the law. In addition, an employee or applicant for employment who believes she or he has been subject to

discrimination, and who has been notified by EEOC that it has been unable to secure voluntary compliance within the allotted 180 days from the filing of the complaint, may request a "right-to-sue" letter from EEOC and file suit in court to enforce Title VII.

The court may order the employer to cease its discriminatory practices, to reinstate employees, to pay back wages, and to take other appropriate affirmative action to eliminate existing discrimination and prevent its recurrence.

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972, AND EXECUTIVE ORDER 11478: EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

Title VII[5] and Executive Order 11478[6] prohibit discrimination based on race, color, religion, sex, or national origin in employment within the Federal Government. The Civil Service Commission investigates and resolves complaints of alleged discrimination against Federal agencies, and requires Federal agencies to establish and maintain affirmative action programs to prevent discrimination and to provide for prompt resolution of discrimination complaints.

Coverage

Title VII and this Executive order prohibit all Federal agencies and the agencies of the District of Columbia with competitive service from discrimination against employees or applicants for employment on the basis of race, color, religion, sex, or national origin.

Examples of discrimination forbidden by Title VII and Executive Order 11478 include refusal of a Federal agency to consider male applicants for clerical-secretarial positions or an agency's insistence that maternity leave begin at an

agency's specified date, rather than at the time determined by the woman employee and her physician.

What Is Required

A Federal agency must provide to all persons an equal opportunity to be hired and promoted into all types of jobs and to receive all available benefits of those jobs. To assure equal employment opportunity, each agency is required to develop and implement an affirmative action plan which must be approved by the Civil Service Commission. Regional offices of Federal agencies must develop and implement separate plans which must be approved by the appropriate regional office of the Civil Service Commission. These plans must inform employees and recognized labor organizations of the affirmative action program and must provide procedures for the resolution of complaints of discrimination from employees or applicants for employment.

Each agency must post the deadlines for filing complaints, as well as the names, addresses, and hours of availability of the Director of Equal Employment Opportunity, the Federal Women's Program coordinator, and the equal employment opportunity officers and counselors.

Complaints

Complaint procedures may vary within individual agencies, but all must contain the following elements:

a. Precomplaint Procedure--Any person who believes herself or himself to be subjected to discrimination prohibited by Title VII or Executive Order 11478 and who wishes to file a complaint, must first consult an equal employment opportunity (EEO) counselor within 30 calendar days of the alleged discrimination. The EEO counselor will investigate the complaint and try to resolve it informally. If the complaint is not resolved to the complainant's satisfaction within 21 days, the complainant may file a formal complaint.

The EEO counselor may not restrain a complainant from filing a formal complaint; nor may the EEO counselor reveal the identity of the complainant until the agency has accepted a complaint, unless the complainant authorizes her or him to do so.

b. The Form of the Complaint--The formal complaint must be in writing and must be signed by the complainant. It should include the name and address of the complainant, the basis for the complaint, and whether the alleged discrimination is based on race, color, national origin, sex, and/or religion.

c. Where to File and with Whom--Complaints may be filed with any of the following agency personnel:

Director
Director of Equal Employment Opportunity
Head of the field installation
Equal employment opportunity officer
Federal Women's Program coordinator

Once the complaint has been received, the Director of EEO must acknowledge it in writing and provide for a prompt investigation, including the circumstances under which the alleged discrimination occurred, the treatment of employees of the complainant's racial, ethnic, religious, or sex group as compared to the treatment of other employees in the part of the agency in which the discrimination allegedly occurred, the policies and practices related to the work situation that may be discriminatory, as well as all other aspects of the complaint. The investigator must be employed either by a different section of the agency than the complainant or by the Civil Service Commission. The investigator must create a file on the investigation. The file is given to the complainant who must be given an opportuntiy to discuss it with the appropriate official. An informal resolution will be attempted again; and if the complainant agrees to it, it will be reduced to writing and placed in the file. If the agency fails to carry out the agreement for reasons that are not the fault of the complainant, the complainant may request, in writing, a

reinstatement of the complaint at the point at which the agency ceased compliance with the terms of its agreement.

At this time, or if informal agreement was reached earlier, a proposed disposition will be made and the complainant will be notified of this in writing. The complainant will be allowed 15 calendar days after receiving this notice to notify the agency in writing of her or his decision either to have a hearing or to have a decision made by the agency head without a hearing. A decision by the agency head without a hearing is a final agency decision and may be appealed to the CSC Board of Appeals and Review. (See below under (f) Disposition and Appeal.) If the complainant has not requested either a hearing or a decision by the agency head, the EEO officer may adopt the proposed disposition or may forward the case to the agency head for decision. The complainant must be notified of the decision in writing.

(d) Representation--At any point the complainant may designate a representative or hire a lawyer.

The employee must have a reasonable amount of offical time with pay to prepare and appear at any hearing or conciliation effort, and so must the representative if that person is also an employee of the agency.

(e) The Hearing--The hearing examiner must be an employee of another agency. Attendance at the hearing is limited to persons determined by the hearing examiner to have direct connection with the complaint. The complainant or her or his representative and the agency representative may cross-examine witnesses under oath, and a record of the hearing will be made. The hearing examiner will send to the agency head, or to her or his designee, the complaint file and record of the hearing, the examiner's findings and analysis of the situation that gave rise to the complaint, and the recommended decision and remedial action. The examiner must then notify the complainant in writing that this has been done and must notify the Director of EEO of the findings and recommendations.

(f) Disposition and Appeal--Thirty calendar days after the examiner submits the recommended disposition it becomes binding on the agency if the agency head (or designee) does not produce a separate decision. The complainant must be notified in writing of the decision, which is the final agency decision; the complainant must be given a copy of the findings, analysis, decision, and hearing record. If the examiner's recommendations are not followed, the letter to the complainant must state why.

The agency must complete the entire procedure, from the filing of the initial complaint to a final agency decision, in 180 days.

The final agency decison may be appealed to the Civil Service Commission within 15 calendar days after the complainant receives a copy of the decision. The written appeal must be sent to:

Board of Appeals and Review
U.S. Civil Service Commission
1900 E St., N.W.
Washington, D.C. 20415

The Board will review the complaint file and all relevant written representations made to it. There is no right to a hearing before the Board; rather, the Board will issue a written decision, explaining the reasons for that decision. Copies will be sent to the agency and to the complainant. The Board's decision is the final Civil Service Commission decision. (Under exceptional circumstances the Commissioners of the Civil Service Commission may reopen and reconsider any previous decision when requested in writing to do so.)

A civil suit may be filed by the complainant within 30 calendar days after a final decision is made by the agency or by the Civil Service Commission; or, a civil suit may be filed after 180 calendar days from either the date of filing

a complaint with an agency or the date of filing an appeal with the Commission on which no decision has been made.

(g) Third Party Allegations--A complaint of discrimination may also be made by an organization or other person on personnel matters that are unrelated to an individual complaint of discrimination. The allegations must be sufficiently specific for the agency to investigate them. The agency must create a file on the complaint investigation and must make this file available to the complainant. The agency will make a decision and must notify the complainant in writing of the decision and of any corrective action taken. Within 30 calendar days after receiving a copy of the decision, the complainant may appeal to the Civil Service Commission in writing, explaining the basis for the appeal. The Commission will then make a decision and may order corrective action.

At each step of the complaint procedure, every agency decision (including rejection or cancellation of a complaint) must be reported to the complainant in writing. This notification must include information on the appeal procedure and the deadline for appealing. Some of the deadlines may be extended under exceptional circumstances.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Civil Service Commission may conduct compliance reviews of individual agencies. If a review or a complaint investigation results in a finding of discrimination within an agency, the Commission may order that corrective action be taken.

Such action may include: up to 2 years of back pay at the grade level at which the victim(s) of discrimination should have been hired or promoted; retroactive promotions; priority consideration for the next hiring or promotion; and job offers of the type and grade denied.

EXECUTIVE ORDER 11246, AS AMENDED BY EXECUTIVE ORDER 11375: FEDERAL CONTRACT COMPLIANCE PROGRAM

Executive Order 11246, as amended by Executive Order 11375[7], prohibits discrimination in employment on the basis of race, color, religion, sex, and national origin by most Federal Government contractors and subcontractors and by contractors and subcontractors in federally-assisted construction. The Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor is responsible for coordinating and overseeing the contract compliance process. The Office of Federal Contract Compliance Programs has issued guidelines, known as Revised Order No. 4,[8] that require contractors to establish and maintain affirmative action programs to eliminate and prevent discrimination. OFCCP has delegated responsibility for implementing program goals to 19 Federal agencies. OFCCP is obligated to provide these compliance agencies with guidance and leadership and to evaluate their effectiveness.

Coverage

Executive Orders 11246 and 11375 prohibit Federal contractors and subcontractors that have contracts of more than $10,000 and banks that are depositories of Federal funds or handle Federal savings bonds from discriminating against their employees or applicants for employment on the basis of race, color, religion, sex, or national origin.

Although labor unions are not directly subject to the requirements of these orders, their collective bargaining agreements, membership, and other practices may determine if the Federal contractors they deal with are practicing nondiscrimination in employment; therefore, unions are important parties to any determination of compliance.

Examples of discrimination forbidden by these orders include a contractor's refusal to hire women for certain jobs because of overtime requirements or weightlifting requirements, or a contractor's acceptance of a union's demand for sex-segregated seniority systems.

OFCCP has also issued guidelines on discrimination because of sex to aid contractors in complying with Executive Order 11246, as amended by Executive Order 11375.[9]

What Is Required

Contractors are prohibited from discriminating on the basis of race, color, religion, sex, and national origin in

all aspects of their employment activities. They are also required to take affirmative action wherever necessary to remedy the effects of past discrimination or to counteract discriminatory barriers to equal employment opportunity.

Other specific obligations include the following:

- Before award of any covered contract the contractor must certify that no facilities provided for employees are subject to segregated use, whether by employer policy or by employee practice.
- Contractors with 50 or more employees and contracts of $50,000 are required to scrutinize tests and other screening procedures and to make all changes necessary to assure that they are nondiscriminatory, as part of a written affirmative action compliance program.
- Contractors must post notices announcing their nondiscrimination responsibilities in places conspicuous to employees, applicants, and representatives of each labor union with which they deal.
- In all advertisements for employment, contractors must state that there will be no discrimination in selection for any position.
- Contractors must include the standard nondiscrimination provisions in all covered subcontracts. Where required by

regulation, contractors must file, and require each subcontractor to file, annual employment information forms.

Although these general assurances of nondiscrimination are given by contractors, construction contractors are not required to include goals by sex in either "hometown" plans (locally developed by the area or by the industry) or imposed plans. In effect, compliance is not strictly demanded in construction contracts where discrimination is based on sex.

Federal agency compliance programs require that the agency make a determination of nondiscrimination for each contractor prior to the award of any covered contract.

Complaint

A complaint may be filed with the OFCCP by any person (or by a representative) who believes herself or himself, or a specific group of persons, to be subjected to discrimination prohibited by Executive Order 11246, as amended by Executive Order 11375. The written complaint should be filed with:

Director
Office of Federal Contract Compliance Programs
Department of Labor
Washington, D.C. 20210

or

The administrator of the individual Federal compliance agency.

The complaint must be filed within 180 days of the alleged discrimination unless, if good cause is shown, the deadline for filing is extended by the OFCCP director, or by the administrator of the contracting agency.

The compliance agency or the OFCCP may investigate the complaint or forward it to EEOC for investigation.

Once a complaint has been filed with the agency, it is the responsibility of the agency to resolve it.

Enforcement and Sanctions

Contractors are subject to thorough onsite compliance reviews by the responsible Federal compliance agency. Where such a review results in a finding of discrimination, specific written commitment for its correction--giving the dates and details of action to be taken--is required of the contractor. For formally-advertised supply contracts of $1 million or more, such compliance reviews must be performed, prior to award, for both the low bidder and for the first tier subcontractor (which holds a subcontract of $1 million or more).

Where complaints or compliance reviews have disclosed discrimination that the contracting agency is unable to remedy by informal means, the following sanctions are

available: OFCCP, or the compliance agency with approval from OFCCP, may begin proceedings to cancel the contract or debar the contractor from future Federal contracts; these proceedings may include a formal hearing, if the contractor requests it. While the hearing is pending, OFCCP may suspend performance on the contract. OFCCP, or the contracting agency with approval from OFCCP, may publish the names of contractors or unions that are not in compliance. OFCCP or the compliance agency may also recommend that the U.S. Attorney General or EEOC file suit to enforce the contractor's obligations, or that appropriate proceedings be begun under Title VII of the Civil Rights Act of 1964.

The Executive order also provides a penalty for noncompliance by unions--publication of the names of unions not complying--and recognizes that remedies in Federal suits against violations of the Executive order may need to encompass unions.

EQUAL PAY ACT OF 1963, AS AMENDED BY EDUCATION AMENDMENTS OF 1972

The Equal Pay Act amended the Fair Labor Standards Act (which established a Federal minimum wage, overtime pay, and child labor laws) to include a prohibition against pay differentials based on sex. All businesses that must pay employees minimum wage are prohibited from discriminating on the basis of sex in determining wages for workers. The Education Amendments of 1972 extended the Equal Pay Act to include previously uncovered executive, administrative, and professional workers (including academic personnel).[10]

Coverage

The act forbids any employer who must pay employees at least minimum wage from determining wages for workers on the basis of sex.

Examples of discrimination forbidden by this act include: establishment of different pay scales for female and male clericals, or for female maids and male janitors who perform substantially similar work; or establishment of higher commissions for male salesclerks who sell men's clothing than for female salesclerks who sell women's clothing.

What Is Required

Covered employers must pay women and men the same wages if they work at the same business location, under similar working conditions, doing similar work which requires equal or substantially similar skill, effort, and responsibility. Difference in pay must be based on merit, seniority, or a method which measures earnings by quantity or quality of production but may not be based on the sex of the worker.

Complaint

A complaint may be filed with the Wage and Hour Division of the Department of Labor by any person who believes herself or himself or any specific group of persons to be the subject of discrimination prohibited by this act. A complaint may also be filed by any individual who believes that violations of the act exist in any place of business. The complaint may be written or oral (by telephone or in person) and may be made anonymously. Complaints should be made to any of the offices of the Wage and Hour Division, which are located in most major cities, or with:

Administrator, Wage and Hour Division
Department of Labor
200 Constitution Avenue, N.W.
Washington, D. C. 20210

The administrator will investigate where a complaint has been made or where there are other indications that an

employer is operating in violation of the act. The administrator will informally attempt to bring the employer into compliance with the act's prohibition against unequal pay on the basis of sex.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the administrator of the Wage and Hour Division may conduct periodic compliance reviews to insure that employers are not discriminating on the basis of sex in determining wages. Where an employer is discriminating and the administrator has found that this cannot be corrected informally, the Department of Labor may file suit to enforce the act.

In addition, an employee who believes he or she has been discriminated against in the payment of wages may file suit to enforce the act. The employee must file suit within 2 years of the alleged discrimination; if the discrimination is found to be willful, the employee has 3 years in which to file.

The court may order the employer to stop discriminating on the basis of sex in determining wages and to pay up to 2 years of back wages. If the discrimination is found to be willful, the courts may order the employer to pay up to 3 years of back wages, plus an equal amount as a penalty.

In addition, an employer who is convicted of willfully violating this act may be subject to a fine of up to $10,000; if convicted twice, the employer may be imprisoned for up to 6 months.

INTERGOVERNMENTAL PERSONNEL ACT OF 1970: MERIT SYSTEM STANDARDS

The Intergovernmental Personnel Act of 1970[11] is designed to encourage the development of State and local government personnel merit systems by requiring agencies or programs of State and local governments that receive grant-in-aid from a Federal agency to develop and implement such systems.

The act also provides funds to enable the Civil Service Commission to make grants to State and local governments to strengthen their personnel administration.

State or local government units receiving funds covered by the act are prohibited, by regulation,[12] from discriminating on the basis of race, national origin, political or religious affiliation or opinions, age, sex, physical disability, or any other characteristic which is unrelated to merit, unless it is a bona fide occupational qualification.[13]

Coverage

Programs of State and local governments that receive grant-in-aid from a Federal agency and any unit of State or local government receiving a grant from the Civil Service Commission may not discriminate in employment on the basis

of race, national origin, political or religious affiliations or opinions, age, sex, physical disability, or any other characteristic that is unrelated to merit, unless it is a bona fide occupational qualification.

Examples of discrimination forbidden include refusal by a local government to employ women in funded government programs (firefighting, for example) or refusal by an employer to admit women to employer-sponsored, federally-funded training programs for administrative positions.

What Is Required

Federally-funded programs with personnel merit system requirements must provide to all employees and applicants for employment equal employment opportunity and equal opportunity to receive all benefits of employment. Such federally-funded programs must also develop and implement affirmative action plans.

State or local governments receiving grants from the Civil Service Commission under the act must provide to all employees and applicants for employment equal employment opportunity and equal opportunity to receive all benefits of employment. The Civil Service Commission may also require these governments to develop and implement affirmative action plans.

Complaints

Each program establishes its own complaint procedures, an explanation of which may be obtained from each program. At minimum, each program must provide for an investigation of the complaint and an appeal of any decision to an impartial body, whose finding of discrimination is binding on the program. A complaint may be filed with any funded program by any person who believes herself or himself, or any specific group of persons, to be subjected to discrimination prohibited by this act and the regulations promulgated under it.

In addition, if the program's complaint procedure does not include provisions for investigation and appeal, a complaint may be filed with:

Civil Service Commission
1900 E St., N.W.
Washington, D.C. 20415

The complaint to the Commission, however, may only address the inadequacy of the program's complaint procedure and may not address the individual discrimination that formed the basis of the complaint.

Enforcement and Sanctions

Where there is an individual complaint of discrimination against a funded program, enforcement and the

imposition of sanctions depend on each program's complaint procedure.

Where the complaint is to the Civil Service Commission concerning deficiencies in the program's complaint procedure, the Commission will investigate and negotiate informally with the program to urge it to bring its standards into compliance with the act's requirements. If these negotiations are unsucessful, the Civil Service Commission will recommend to the funding agency that appropriate action be taken to force compliance; this might include withholding funds from the program or refusing to grant funds in the future.

EQUAL EMPLOYMENT OPPORTUNITY IN THE STATE COOPERATIVE EXTENSION SERVICES

The Cooperative Extension Services of the Department of Agriculture[14] are associated with land-grant universities and are responsible for providing the general public with useful and practical information (through demonstrations and publications) about agriculture and home economics. Regulations[15] issued by the Secretary of Agriculture prohibit discrimination in employment and provide for a procedure, involving both the university president and the Secretary, to assure that the Cooperative Extension Service provides equal opportunity in employment to each individual without regard to race, color, national origin, sex, or religion.

Coverage

All land-grant universities operating a Cooperative Extension Service and all positions in all units of the Cooperative Extension Service are included.

Examples of prohibited discrimination include the refusal of a State Extension Service to consider women applicants for jobs involving technical assistance to farmers or restricting women to positions as demonstrators in the home economics division.

What is Required

To ensure that employment is provided without discrimination, each university is required to develop and implement an affirmative action program. This program must include a statement of the nondiscrimination policy, a plan for eliminating discrimination and assuring equal opportunity in employment, and an enforcement procedure. Procedures for identifying and eliminating discriminatory employment practices and for handling complaints must be delineated, and records must be kept of all complaints and their disposition.

Complaints

Each university must establish its own procedures for both the informal resolution of complaints and for the filing of a formal written complaint. A complainant may file a formal complaint if she or he is not satisfied with the result of the informal procedure, or if she or he chooses not to follow the informal procedure. Formal complaint procedures may vary among programs but must contain the following:

(a) The Form of the Complaint--The formal complaint must be written and must include: the name and address of the complainant, the specific basis of the complaint, and a

statement that the alleged discrimination was based on race, color, national origin, sex, and/or religion.

(b) Deadline for Filing--A complaint must be submitted to the designated university official within 90 days of the alleged discriminatory act; however, this deadline may be extended by the university president or the Secretary of Agriculture.

Each university's procedures must provide the names and locations of the persons with whom the complaints may be filed. Complaints may also be filed with:

Secretary of Agriculture
Department of Agriculture
14th St. and Independence Ave., S.W.
Washington, D.C. 20250

Complaints filed with the Secretary are promptly forwarded to the university president or designee for processing.

(c) Representation--A complainant may designate in writing a person or an organization to represent him or her.

The employee is allowed to use a reasonable amount of official time, with pay, to appear at any conciliation effort or hearing on the complaint. The complainant's representative may also use official time if she or he is an employee of the Cooperative Extension Service of the U.S. Department of Agriculture.

(d) The Hearing--The complainant or the university president may request a hearing before an impartial board or hearing officer. At the hearing, the university president, the complainant, and the person whose alleged conduct is the cause of the complaint may call and cross-examine witnesses under oath; a record of the hearing must be made.

(e) Disposition of Appeal--The impartial board or hearing officer sends its conclusions and recommendations to the university president, who can then either return the case to the board or hearing officer for further hearings, make a decision on the complaint, or otherwise dispose of it. The complainant may appeal the decision to the Secretary of Agriculture within 30 days of (1) disposition by the university president, (2) refusal by the president to accept the complaint, or (3) failure of the president to act in accordance with the program's nondiscrimination requirements. The Secretary may hold a hearing and issue a written decision as to whether the university president's decision or disposition of the complaint was proper.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may choose to conduct periodic compliance reviews to insure that programs are operated without discrimination in employment. When the Secretary finds that

a land-grant university or Cooperative Extension Service is not in compliance with this act, she or he may terminate or refuse to grant funds to the programs or take any other action authorized by law.

EQUALITY FOR MARRIED FEDERAL EMPLOYEES

This act[16] provides for equality of treatment for female Federal employees with respect to "preference eligible" employment status for veterans, cost-of living allowances in foreign areas, and regulations providing benefits based on marital status.

The Civil Service Commission gives preference in the hiring and retention of Federal jobs to veterans, spouses of veterans who are totally and permanently disabled as a result of injury incurred during service-connected duty, the widowed spouses of veterans, and, in some cases, their mothers. Prior to 1971, these preferences were provided only to the wife of an injured veteran or an unmarried widow. The act extended the preferences to the husband or unmarried widower.

The Federal Government provides a separate maintenance allowance where a Federal employee is compelled to maintain her or his family elsewhere than at the post of assignment; also provided are education and travel allowances when a Federal employee is assigned to a foreign area and must incur the cost of providing adequate education at the kindergarten through secondary level for dependents. Prior to 1971 these allowances were provided only to male Federal

employees and their dependents. The act extended the allowance to female Federal employees and their dependents.

The President now may prescribe rules that prohibit discrimination based on marital status in an executive agency or in the competitive service. Prior to 1971, Federal agencies were permitted to treat females and males differently.

Coverage

The entire Federal Government, including the civilian (civil service and foreign service) and military sectors must not discriminate on the basis of sex in the provision of benefits. These must be provided equally to female and male Federal employees and their spouses and/or families. Under certain conditions, male and female veterans, their spouses, and mothers must receive preference in the hiring and retention of Federal jobs without regard to sex.

Examples of discrimination forbidden by this act include denial of "preference eligible" status to the widower of a female veteran or denial of an educational allowance for the dependent children of a female Federal employee assigned to a foreign post.

What Is Required

The Civil Service Commission and all Federal agencies must ensure that female Federal employees and their spouses

and/or families receive the same benefits as male Federal employees and their spouses and/or families. Both male and female veterans and their spouses or widowed spouses must be considered "preference eligibles" and receive preference in the hiring and retention of Federal jobs. The mother of a veteran who is deceased or permanently and totally disabled as a result of service-connected duty is also considered a "preference eligible" if her husband is totally and permanently disabled, or if she is widowed, divorced, or separated.

Complaints

A complaint may be filed with the Civil Service Commission by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act. The written complaint should be filed with the area office of the Civil Service Commission. The complaint procedures vary, depending on the type of discrimination alleged (for example, denial of "preference eligible" status, adverse action by an agency against a "preference eligible" employee, or denial of separate maintenance allowance to a married Federal employee on the basis of sex); a complainant, therefore, should request information on the

specific complaint and appeals procedure when filing the initial complaint.

Enforcement and Sanctions

The enforcement and sanctions depend upon the complaint procedure.

FEDERAL EMPLOYEES COMPENSATION ACT

The Federal Government provides benefits for certain employees, their dependents, and their spouse when the employee is injured or killed in the performance of her or his job.[17] Such benefits may include the cost of medical services and vocational rehabilitation, a living stipend, and benefits for dependents and spouses where the employee is disabled or killed. Employees covered include those of the Federal Government, District of Columbia government (except members of the police and fire department), office staff of former Presidents, Civil Air Patrol, Job Corps, Peace Corps, National Teacher Corps, certain members of the Reserve Officers Training Corps, and other limited categories. All claims for compensation are processed by the Office of Federal Employees Compensation (OFEC) in the Department of Labor.

The amendments to this act equalize the availability of benefits to husbands of injured employees and widowers of killed employees, so that they are compensated to the same extent as wives and widows who are in the same situation.[18]

Coverage

The Federal Government must provide equal benefits to widows and widowers and to wives and husbands of covered

employees killed or disabled in the performance of their jobs.[19]

An example of discrimination forbidden by these amendments is the denial of benefits to the widower or husband of an employee killed or disabled in the performance of her job because he was not dependent upon her for support.

What Is Required

Widowers and husbands of Federal employers must receive the same benefits that widows and wives are entitled to receive from the Federal Government. Widowers and widows and husbands and wives need not show dependence on the killed or disabled spouse to receive benefits, though certain other requirements may have to be met, regardless of the sex of the beneficiary.

An example of discrimination forbidden by these amendments is the denial of benefits to the widower or husband of an employee, killed or disabled in the performance of her job, because he was not dependent upon her for support.

Complaint

A covered employee, injured in the performance of her or his job, who desires to claim benefits, must file notice with her or his official superior that an injury has

occurred. This notice must be filed within 48 hours of the time of injury, but OFEC may extend this deadline up to 1 year after the time of injury. A written claim for compensation for injury must then be filed within 60 days of the time of injury; OFCCP may extend this deadline up to 1 year after the time of injury.

If the employee dies as a result of an injury, the widowed spouse and/or dependents must file a claim for compensation within 1 year of the time of the death. OFEC may extend this deadline up to 5 years after the time of death.

All claims should be filed with the employee's official superior except under special circumstances, in which case claims may be filed with:

Department of Labor
Director, Office of Federal Employees Compensation
200 Constitution Ave., N.W.
Rm. South 3524
Washington, D.C. 20210

If an individual believes that, in violation of this act, OFEC has incorrectly denied benefits or has awarded lesser benefits than she or he is entitled to, that individual (or a representative) may request, at any time, that OFEC review its decision. If a hearing is desired, the review request must be made within 30 days of the issuance of OFEC's decision.

All final decisions of OFEC may be appealed to the Employees' Compensation Appeal Board (ECAB), at the above address. The appeal must be filed within 90 days of the issuance of OFEC's decision, but ECAB may extend this deadline up to 1 year after the issuance. A hearing may be requested. If the claimant is dissatisfied with ECAB's decision, a review may be requested from ECAB within 30 days of its issuance.

OFEC and ECAB will provide information about procedures and the rights of claimant and forms for filing claims and requesting reviews, if requested to do so.

If the claimant receives a final decision from ECAB, which he or she believes incorrectly denies benefits or awards lower than he or she is entitled to, in violation of this act, a civil suit may be filed in Federal court.

Enforcement and Sanctions

OFEC, ECAB, or the court may order that the correct benefits be paid to the claimant.

EQUAL EMPLOYMENT OPPORTUNITY AND TREATMENT OF MILITARY PERSONNEL IN THE AIR FORCE

These regulations[20] define Air Force policy regarding equal opportunity and treatment for military personnel and their dependents. Commanders are required to assure that personnel on the bases under their command are not discriminated against on the basis of race, color, national origin, or sex. In addition, they are required to seek to eliminate discrimination against military personnel off base.

Coverage

These regulations forbid the establishment or maintenance by Air Force bases of policies which discriminate on the basis of race, color, national origin, or sex.

Examples of discriminatory policies forbidden by these regulations include: refusal of the base commander to declare as off-limits an off-base billiards parlor which refuses to serve female military personnel; denial of equal on-base housing facilities for female and male military personnel or continuation or referrals to off-base housing facilities which refuse to provide equal housing for female

and male military personnel; refusal to train and employ female military personnel for certain jobs on base.

What Is Required

Base directives must reflect equal opportunity and treatment for all military personnel. In addition, base commanders must seek to eliminate off-base discrimination against military personnel by working with off-base community groups and by establishing and monitoring programs to assure nondiscrimination in the area of off-base housing.

Complaint

A complaint may be filed by any person (or a representative) who believes himself or herself or a specific group of persons to be subjected to discrimination prohibited by these regulations. Complaints relating to base policy should be filed with the base Equal Opportunity Office; those relating to off-base business establishments, other than housing, should be filed with the base Armed Forces Disciplinary Control Board; complaints relating to off-base housing should be filed with the base Housing Referral Office. Complaint procedures vary, depending on the type of discrimination alleged. A complainant, therefore, should request specific information on complaint and appeals procedures when filing the initial complaint.

Enforcement and Sanctions

The enforcement and sanctions depend on the complaint procedure, but may include ordering changes in base policy to bring such policy into compliance with the prohibition against sex discrimination and designating off-base businesses which are found to be operating in a discriminatory manner as off-limits to military personnel.

NATIONAL APPRENTICESHIP ACT OF 1937

The Department of Labor (DOL) is responsible for formulating standards to safeguard the welfare of apprentices.[21] Apprenticeship programs register with the State Apprenticeship Council (or other State agency recognized by DOL) which is responsible for adopting and implementing a State plan consistent with this act and the requirements of DOL's regulations. If there is no recognized State agency, programs are registered with DOL.

Programs register voluntarily for the official recognition because State law requires them to do so, or because certain Federal construction projects require that all apprentices employed be in registered programs. Registration subjects the apprenticeship program to DOL's regulations[22] which prohibit discrimination on the basis of race, color, religion, national origin, or sex.

Coverage

Apprenticeship programs registered with the State Apprenticeship Council (or other appropriate State agency) or DOL may not discriminate in the recruitment, selection, employment, and training of apprentices on the basis of race, color, religion, national origin, or sex.

Examples of discrimination forbidden by these regulations include refusal of a registered program to select qualified female applicants for apprenticeship, or imposition of limitations on the type of training or work which female, but not male, apprentices may take part in.

What Is Required

All registered apprenticeship programs must provide to all apprentices and applicants for apprenticeships equal opportunity to participate in all aspects of the program. Such programs must also develop and implement affirmative action plans unless they have less than five apprentices, or have submitted satisfactory evidence to DOL that they are subject to an equal employment opportunity program providing for affirmative action. The DOL-recognized State agency, if any, must enforce the State plan.

Complaints

Certain apprenticeship programs have their own complaint procedures which include a review body consisting of three or more persons not directly associated with the administration of an apprenticeship program. Individual programs should be contacted to ascertain whether they are registered, have a complaint procedure, and if so, what that procedure is. DOL can also provide this information and will refer complaints to the review body, if there is one.

Where a complaint is referred, DOL will, within 30 days, obtain reports from the complainant and the review body as to the disposition of the complaint. If it is satisfactorily resolved, the case will be closed and DOL will notify the complainant that it has been closed.

If there is no review body, if the complainant is dissatisfied with the review body's decision, if the review body has failed to resolve the complaint, or if the complaint is against the State Apprenticeship Council (or other appropriate State agency), a complaint may be filed with DOL by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by these regulations. The complaint should be filed with:

Secretary of Labor
200 Constitution Ave., N.W.
Rm. South 2030
Washington, D.C. 20210

The complaint must be filed within 90 days of the alleged discrimination or 30 days from the final decision of the review body, whichever is later, but DOL may extend this deadline.

Complaints must be in writing and signed by the complainant. They should include at least the following: the complainant's name, address, and telephone number; the

apprenticeship program or State agency involved; and a description of the alleged discriminatory acts or practices.

DOL will investigate where a complaint has been made, or where other indications exist that an apprenticeship program is discriminating in violation of these regulations, or where the State agency has not adopted or implemented a valid State plan. DOL will then attempt to bring the program or State agency into compliance with these regulations.

Enforcement and Sanctions

In addition to investigations initated by a complaint, DOL may conduct periodic compliance reviews to insure that apprenticeship programs are operated without discrimination and that valid State plans are adopted and implemented. Where a program is found to be discriminating and DOL has found that the problem cannot be corrected informally, it may deregister such a program. Where a State Apprenticeship Council (or other DOL-recognized State agency) fails to adopt or implement a valid State plan, DOL may withdraw its recognition of the State agency. Before such action may be taken, DOL must allow for a hearing. DOL may only deregister a program or withdraw recognition where it finds that there will not be voluntary compliance with the nondiscrimination requirements or that the State agency will

not voluntarily adopt and implement a valid State plan. Where a program is deregistered or the State agency has its recognition withdrawn, DOL will so notify the complainant.

In addition, DOL may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or may take any other action authorized by law.

Notes to Section I

1. See glossary for definition of terms.

2. 42 U.S.C. §2000e et seq. (Supp. III, 1973).

3. See section on Equal Employment Opportunity in the Federal Government.

4. 29 C.F.R. Part 1604 (1974). Included as Appendix I of this handbook.

5. 42 U.S.C. §2000e et seq. (Supp. III, 1973).

6. 3 C.F.R. 207 (1974) (issued in 1969).

7. 3 C.F.R. 169 (1974) (issued in 1965 and 1967, respectively).

8. 41 C.F.R. §60-1.40 (1974). Revised Order No. 4 (41 C.F.R. 60-2 (1974)) gives detailed instructions for implementing this regulation in industries other than construction. Revised Order No. 4 is included as Appendix II of this handbook.

9. 41 C.F.R. §60-20 (1974). Included as Appendix III of this handbook.

10. 29 U.S.C. §206(d), amending the Fair Labor Standards Act of 1938; 29 U.S.C. §201 et seq. (1970).

11. 42 U.S.C. §4701 et seq. (1970).

12. 45 C.F.R. §70.4 (1973).

13. See glossary for definition.

14. 7 U.S.C. §341 et seq. (1970).

15. 7 C.F.R. Part 18 (1975).

16. 5. U.S.C. §§2108, 5924, 7152 (Supp. III, 1973).

17. 5 U.S.C.A. §8101 et seq. (Supp., 1975).

18. 5 U.S.C.A. §§8101 (11), 8110(a) (2) (Supp., 1975).

19. 20 C.F.R. Part 01 et seq. (1974).

20. 32 C.F.R. Part 886 (1974). Amended to include sex discrimination in 1973.

21. 29 U.S.C. 650 et seq. (1970).

22. 29 C.F.R. Part 30 (1974).

II. FEDERAL PROGRAMS

No law exists which prohibits sex discrimination in all federally-assisted programs. However, several Federal laws and regulations prohibit sex discrimination by recipients of certain Federal assistance and specific programs under Federal control. Although employment is sometimes specifically covered, the prohibition usually applies only to participation in a program or receipt of the benefits of the program. For any discriminatory action, policy, or practice there may be several possible avenues of redress. Filing a complaint under one law or regulation will not usually prevent filing a complaint under another. Therefore, if an individual or a group of persons feel that they have been subjected to sex discrimination, they should examine all possible avenues of redress. Even where there is uncertainty about the applicability of a law or procedure to a specific instance of sex discrimination, the victim of such discrimination should consider utilizing the complaint procedure.

Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally-assisted programs on the basis of race, color, or national origin, but does not include a specific prohibition against sex discrimination. Where

agencies have prohibited sex discrimination in federally-assisted programs by regulations, they generally utilize their established Title VI procedures for enforcement. These procedures provide that a complaint may be filed by any person who believes herself, himself, or any group of persons to be subjected to sex discrimination prohibited by agency regulations. Complaints should be filed with the appropriate agency with the power and authority to apply sanctions where discrimination is found.

Under Title VI type procedures, the complaint alerts the agency that discrimination may exist and that an investigation is necessary. This permits the agency to impose sanctions where discrimination is found. Although these procedures do not necessarily afford the complainant the right to a hearing or the right to have an individual complaint resolved, the complaint is a potentially powerful tool because it assists agencies or other responsible parties to decide whom to investigate; where to conduct compliance reviews; when to impose sanctions (such as ordering accelerated repayment of loans or withholding funds); and which contracts, loans, or other assistance to renew.

The Department of Justice is the litigation arm of the executive branch of the Federal Government. Under certain

circumstances, the Attorney General of the United States is authorized to file suits charging a pattern and practice of discrimination. In addition, the Department of Justice has overall responsibility for Title VI coordination within the Federal Government, and the Attorney General is authorized under Title VI to file suits charging discrimination on the basis of race, color, or national origin. Where the Attorney General is authorized to file suits charging sex discrimination, it has been noted in specific sections of this handbook.

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT OF 1973: CETA

This act[1] establishes a decentralized system of Federal, State, and local government programs to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons. These programs may be sponsored by a State, a unit of local government, or an employment program serving a rural area with a high level of unemployment. These programs are sometimes called "Manpower" or "Employment Training," "Rural Concentrated Employment Program," or "Comprehensive Manpower Training," and may include classroom training, on-the-job training, and public service employment.

The Secretary of Labor is responsible for determining who receives funds, for approving programs, and for assuring that the programs are operated in compliance with the nondiscrimination provision of the act. Under this provision, the Secretary may not provide financial assistance for any program unless the grant, contract, or agreement to receive funds specifically provides that no person with responsibilities in the operation of the program will discriminate against any program participant or applicant for participation on the basis of race, color,

creed, national origin, sex, political affiliation, or beliefs.

Coverage

Any job training program that receives funds through this act may not discriminate on the basis of race, color, creed, national origin, sex, political affiliation, or beliefs. This prohibition also covers anyone who contracts or subcontracts with any funded program, as well as anyone who works with such a program by agreement.

Examples of discrimination forbidden by the act include refusal to admit women to certain training programs considered "inappropriate" for women and establishment of different requirements or lower pay levels for women than for men participating in the same program.

What Is Required

A program receiving funds under this act must afford all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits, including services and financial aid.[2]

Complaint

Each program has its own complaint procedure which must be followed before a complaint may be filed with the Department of Labor (DOL). Once a program sponsor issues a final decision on a complaint, if the complainant is not

satisfied with the results, another complaint may be filed with DOL by any person (or a representative) who believes himself, or herself, or any specific group of persons to be subjected to discrimination prohibited by this act. A complaint to DOL must be filed within 30 days after the sponsor's final decision. The complaint should be filed with the local DOL Assistant Regional Director for Employment and Training (AROET). If the complainant does not know the local address of the responsible Assistant Regional Director, the complaint may be filed with:

Secretary of Labor
200 Constitution Ave., N.W.
Rm. South 2030
Washington, D.C. 20210

and should include a request that the complaint be forwarded to the appropriate assistant regional director.

Complaints must be in writing, signed by the complainant, and notarized. They should include at least the following: the complainant's name and address; the alleged discriminating party's name and address; a statement of facts, including dates, of the alleged discriminatory acts or practices; and a statement that the program complaint procedure was completed.

The ARDET will investigate complaints and notify the complainants of the results of any investigation. If there

are indications of discrimination, DOL will attempt informally to bring the program into compliance with the act's nondiscrimination provision. If this is unsuccessful and a hearing is held, the complainant will be notified of the time and location. Copies of the decision by DOL will be sent to the complainant.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Department of Labor (DOL) may conduct periodic compliance reviews. Where a program is discriminating and DOL finds that this cannot be corrected informally, it may terminate or refuse to grant funds to the program. Before such action may be taken, DOL must allow an opportunity for a hearing and must find that voluntary compliance with the nondiscrimination provision of the act will not occur. In addition, DOL may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or may take any other action authorized by law.

TITLE IV OF THE SOCIAL SECURITY ACT, AS AMENDED: WORK INCENTIVE (WIN)

This act[3] provides Federal funds for State and local Work Incentive (WIN) programs which provide counseling, training, employment, support services such as childcare, and incentive payments to participants. Certain persons who are recipients of Aid to Families with Dependent Children (AFDC) are required or permitted (where not required) to register for WIN. Placement priority in a WIN program is as follows: unemployed fathers; volunteer mothers; other mothers and pregnant women under 19; dependent children and other relatives over 16 who are not in school or training or employed; and all others.

The Department of Labor (DOL) and the Department of Health, Education, and Welfare (HEW) jointly administer WIN and are responsible for approving programs and assuring that programs are in compliance with DOL[4] and HEW[5] regulations prohibiting discrimination on the basis of race, creed, color, sex, or national origin in any WIN program.

Coverage

These regulations forbid any WIN program from discriminating on the basis of race, creed, color, sex, or national origin.

Examples of discrimination forbidden by these regulations would include: refusal of WIN to assign women to certain types of employment (construction work, for example) while men are so assigned; or establishing criteria, unrelated to job performance, for entrance into training programs which disproportionately affect women (height and weight minimums, for example) and effectively limit their participation.

What Is Required

WIN programs must afford all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.

Complaint

Different complaint procedures are followed, depending on who the complainant is. There are two categories of complainants: (1) AFDC recipients registered in a WIN program and (2) employees of WIN programs who are not AFDC recipients.

AFDC recipients who are registered in WIN must use the complaint procedure set up by the State plan, called the WIN Adjudication System. These procedures should be available through the local WIN sponsor. If the complainant is unable to obtain a copy of the procedures, they may be obtained from:

Secretary of Labor
200 Constitution Ave., N.W.
Rm. South 2030
Washington, D.C. 20210

Procedures may vary between States but each local project will have an informal complaint procedure. If the complainant is not satisfied with the informal disposition, a formal complaint may be filed by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by these regulations. The formal complaint will be processed through the WIN Adjudication System. Upon receipt of a written request, a hearing officer will hear and decide the complaint. Within 10 days of the request, a notice of scheduled hearing will be sent to the complainant indicating the date, time, and place of the hearing, the issues to be considered, and the hearing procedure to be followed. Hearings will be scheduled between 10 and 30 days of the date of the mailing of the hearing notice. Within 10 working days following the hearing, the hearing officer will send the complainant a copy of the decision stating the findings and conclusions of law and instructions for appealing the decision if the complainant is dissatisfied.

The complainant may appeal within 10 days following the mailing date of the hearing officer's decision. The appeal

must be filed with the State WIN appellate body, or the National Review Panel (NRP) in DOL if there is no State WIN appellate body. If the appeal is to a State WIN appellate body, within 30 days of the request for review it will send to the complainant a copy of the decision stating its findings of fact and conclusions of law and instructions for appealing the decision to the NRP.

Appeals to the NRP must be filed within 10 days of the mailing date of the written decision being appealed. They should be filed with:

National Review Panel
Department of Labor
Washington, D.C. 20036

Appeals must be in writing and must identify reasons in support of the appeal. The NRP may choose not to hear the appeal and will notify the complainant of its decision. If a party other than the complainant appeals, the complainant will be so notified and may, within 10 days of the mailing of the notice, respond to the NRP in support of or opposition to the appeal, and if desired, request an oral hearing, including the reasons for an oral presentation. If an oral hearing is granted, the complainant will be notified and may appear.

NRP hearings may be before an NRP panel, or before an administrative law judge who will make findings and

recommendations to the NRP panel, which will be mailed to the complainant. Within 10 days of the mailing date of these findings and recommendations, the complainant may file exceptions. NRP will prepare a written decision indicating its findings, the reasons for its conclusions, and an appropriate order, and a copy will be sent to the complainant.

In the WIN Adjudication System, complainants are entitled to be represented by an attorney or other person. Complainants should send copies of all complaints, appeals, or other related documents to all other parties.

Employees of WIN programs who are not AFDC recipients may utilize DOL or HEW existing Title VI complaint procedures.[6] Under these procedures, a complaint may be filled with DOL or HEW by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by WIN regulations. The written complaint should be filed with the Assistant Regional Director of Manpower of DOL or the Regional Commissioner of the Social and Rehabilitative Service of HEW.[7] If the complainant does not know the address of the above, the complaint may be filed with:

Secretary of Labor
200 Constitution Ave., N.W.
Rm. South 2030
Washington, D. C. 20210

or

Secretary of Health, Education, and Welfare
330 Independence Ave., S.W.
Washington, D.C. 20201

and should include a request that the complaint be forwarded to the appropriate Assistant Regional Director of Manpower or Regional Commissioner. Complaints must be filed within 180 days of the alleged discrimination, but DOL and HEW may extend this deadline.

DOL and HEW may investigate where a complaint has been made or where there are other indications that the WIN program is discriminating on the basis of sex. DOL and HEW will informally attempt to bring the institution into compliance with WIN regulations' nondiscrimination provisions. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of DOL and HEW to resolve it.

Enforcement and Sanctions

AFDC recipients registered in WIN may receive retroactive AFDC and WIN benefits and be reinstated or reregistered into the WIN program, and the program may be ordered to cease discriminating.

Addition to investigations initiated by a complaint, DOL may conduct periodic compliance reviews. Where a WIN

program is found to be discriminating on the basis of sex and DOL finds this cannot be corrected informally, it may reduce or terminate Federal funds to the WIN program. Before such action may be taken, DOL must allow for a hearing and must find that there will not be voluntary compliance with the nondiscrimination requirements. DOL also may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Most educational institutions across the United States receive Federal financial assistance; these include preschool programs, elementary and secondary school systems, 4-year colleges and universities, vocational and technical schools, 2-year community and junior colleges, and graduate and professional schools. Title IX of the Education Amendments of 1972[8] and HEW's Title IX regulations[9] prohibit educational institutions which receive Federal funds from discriminating on the basis of sex.

Coverage

This prohibition covers educational programs, employment, health benefits, housing, athletics, admissions, and financial aid, and all other programs and services of the institution, except fraternities and sororities.[10] Military schools and schools operated by religious organizations whose tenets are inconsistent with the provisions of Title IX, are exempt from coverage.

Vocational, professional, graduate, and public undergraduate schools may not discriminate on the basis of sex in admissions, but private undergraduate schools, schools which have traditionally admitted only individuals of one sex, and public and private preschools, elementary

and secondary schools (except where such schools are vocational) are exempt from the provisions with regard to admissions only. Schools which are in transition from single-sex to co-educational institutions are allowed 7 years to complete the process, during which they may continue to make admissions decisions on the basis of sex.

Examples of discrimination forbidden by these amendments include: refusal of a board of education to hire or promote qualified women as principals in the school system; refusal of a college to provide housing of comparable quality and cost to students of both sexes; or maintenance of sex-segregated classes in business, vocational, technical, home economics, music, and adult education courses or programs.

What Is Required

An education program or activity receiving Federal funds must afford employees, students, and potential employees and students equal employment opportunity and equal opportunity to participate in and receive the benefits of all educational programs and activites, without regard to sex.

Specific obligations include the following:

All educational institutions are required to refrain from sex discrimination (except as otherwise noted). Where

the director of HEW's Office for Civil Rights finds that an institution has discriminated on the basis of sex in an education program or activity, the institution must take remedial action to overcome the effects of such discrimination. However, in the absence of a determination of prior acts of discrimination based on sex, the institution is not required to act affirmatively to overcome limited participation by persons of a particular sex, although it may choose to do so.

Generally, institutions may not utilize tests, counseling, or recruiting methods which have a disproportionately adverse effect on persons on the basis of sex, either for admission to programs or activities or for employment. In admissions, testing or counseling materials may be different for males and females if they cover the same interest areas and occupations and the use of such different materials is shown to be essential to eliminate sex bias. In employment, testing may be different for males and females if it is shown to be valid in predicting successful performance and if alternatives are unavailable. Recruitment of members of one sex may be used remedially to overcome the effects of past discrimination, but may not otherwise be used if it has a discriminatory effect.

Institutions may not make preadmission or preemployment inquiries about actual or potential marital, parental, or family status of individuals. For both students and employees, childbirth, pregnancy, termination of pregnancy and recovery therefrom must be treated as any other temporary disability. In the absence of a leave policy, the institution must treat these factors as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee must be reinstated in a comparable position without a decrease in pay, privileges, and/or promotional opportunities. Students must be reinstated at their previous status and may not be discriminated against or excluded from a program or activity unless they voluntarily request to participate in a separate program or activity.

If the institution participates in the administration of scholarships, awards, or fellowships which discriminate on the basis of sex, it must provide reasonable opportunities for similar awards for members of the other sex. In the case of athletics, the institution must provide reasonable opportunities for scholarship awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

Institutions may provide separate housing based on sex, but may not impose different rules, fees, or requirements or provide different benefits to one sex. Housing for women and men must be comparable in quality and cost and proportionate in quantity to the number of students of each sex applying for it.

Institutions may provide separate toilet, locker room, and shower facilities on the basis of sex, but the facilities provided for students of one sex must be comparable to those provided for students of the other sex.

The use of particular textbooks and other curricular materials are not prohibited by Title IX, regardless of content. However, courses, programs, and activities may not be segregated by sex except in the case of choruses with vocal range requirements resulting in a single sex chorus, courses on human sexuality on the elementary and secondary level, and body contact sports. Physical education programs on the elementary level must be integrated by July 21, 1976, and by July 21, 1978, above the elementary level.

Separate athletic teams may be maintained for sports involving competitive skills and body contact. For non-contact sports only, if no separate team for a particular sport exists for one sex and previous opportunities were limited for that sex to participate, all persons must be

permitted to try out for the existing team. Teams for contact sports may remain single-sex, even if no team is available for the excluded sex. Institutions are permitted to make unequal aggregate and per capita expenditures for members of each sex on a team or for separate male and female teams so long as this does not interfere with equality of opportunity for members of each sex. Necessary funds must be provided for teams for each sex.

Complaints

Each institution must adopt and publish complaint procedures and designate at least one employee to carry out its Title IX responsibilities, including investigation of complaints. The institution must notify all students and employees of the appointed employee's name, office address, and telephone number.

In addition, a complaint may be filed with the Office for Civil Rights of the Department of Health, Education, and Welfare by any person (or a representative) who believes herself or himself or either sex as a class to be subjected to discrimination prohibited by Title IX. The written complaint should be filed with:

Director, Office for Civil Rights
Department of Health, Education and Welfare
330 Independence Ave., S.W.
Washington, D.C. 20201

Complaints must be filed within 180 days of the alleged discrimination, but HEW may extend this deadline.

HEW may investigate where a complaint has been made or where there are other indications that the educational institution is discriminating on the basis of sex. HEW will informally attempt to bring the institution into compliance with the requirements of Title IX. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of HEW to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HEW may conduct periodic compliance reviews. Where an educational institution is found to be discriminating on the basis of sex and HEW finds that this cannot be corrected informally, it may terminate or refuse to grant funds to the institution. Before such action may be taken, HEW must allow an opportunity for a hearing and must find that there will not be voluntary compliance with the nondiscrimination requirements. In addition, HEW may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

PUBLIC HEALTH SERVICE ACT, AS AMENDED BY THE COMPREHENSIVE HEALTH MANPOWER TRAINING ACT OF 1971, AND THE NURSE TRAINING ACT OF 1971: THE PUBLIC HEALTH SERVICE

The Public Health Service Act, as amended[11], provides funds, loan guarantees, and interest subsidies to aid in the education and training of all health workers including, for example, doctors, nurses, and technicians. This assistance is used for training programs, construction of schools or training centers, and financial assistance to students in health professions. Discrimination on the basis of sex is prohibited in all funded programs.

The Secretary of the Department of Health, Education, and Welfare (HEW) is responsible for determining who receives assistance, for approving programs, and for ensuring that such programs do not discriminate on the basis of sex. The Secretary may not provide financial assistance for any program unless the grant, contract, or agreement to receive funds specifically provides that no person will discriminate against any program participant or applicant on the basis of sex.

Coverage

These acts and HEW regulations[12] forbid any medical school, nursing school, or other health professional school

or training program which receives funds through these acts from discriminating on the basis of sex in the admission of students, in post admission activities, benefits or services, or in the employment of individuals working directly with applicants for admission or students enrolled in training programs.

Examples of discrimination forbidden by these acts include maintenance of different admission standards for male and female applicants by a medical school, or refusal of a training program to accept men in nurses training courses.

What Is Required

A medical, nursing, or other health professional school receiving funds under these acts must afford all students and potential students equal opportunity to participate in and receive the benefits of all activities, services, and educational programs. Such schools must afford all employees and potential employees who work directly with students or applicants for admission equal employment opportunity, without regard to sex.

Complaint

Each institution must adopt and publish complaint procedures and designate at least one employee to carry out its nondiscrimination responsibilities, including

investigation of complaints. The institution must notify all students, applicants for admission, and employees working directly with students of this employee's name, office address, and telephone number.

In addition, a complaint may be filed with HEW's Office for Civil Rights by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by these acts and regulations. The written complaint should be filed with:

Higher Education Division
Office for Civil Rights
Department of Health, Education, and Welfare
330 Independence Ave., S.W.
Washington, D.C. 20201

HEW will make an investigation where a complaint has been made, or where there are other indications that the covered institution is discriminating; HEW informally will attempt to bring the institution into compliance with the nondiscrimination requirements of the acts and regulations. Once a complaint has been filed, the complainant is no longer involved and it is HEW's responsibility to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HEW may conduct periodic compliance reviews. Where an institution is found to be discriminating on the basis of sex and HEW has found that this cannot be corrected informally, it may terminate funds or refuse to grant funds to the institution. Before such action may be taken, HEW must allow for a hearing and may only terminate funds where it finds that there will not be voluntary compliance with the nondiscrimination requirement. HEW may also refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

THE CONSUMER CREDIT PROTECTION ACT OF 1968, AS AMENDED BY THE EQUAL CREDIT OPPORTUNITY ACT OF 1974

The Consumer Credit Protection Act, as amended the Equal Credit Opportunity Act,[13] prohibits discrimination in credit transactions on the basis of sex or marital status. The act, as amended, took effect on October 28, 1975. The Federal Trade Commission, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and nine other Federal agencies are responsible for enforcement of the act. The Federal Trade Commission has primary enforcement responsibilities.

Coverage

The Equal Credit Opportunity Act forbids any creditor--person, bank, credit union, loan company, corporation, or others who regularly extend, renew, or continue credit--from discriminating on the basis of sex or marital status in the granting of credit.

Examples of discrimination forbidden by this act include a bank or credit union setting higher income requirements for loans to women than to men, or a furniture company requiring a married woman to have her husband's signature on the installment contract but not requiring a man to include his wife's signature.

What Is Required

Any creditor must provide applicants for extension, renewal, or continuation of credit, equal opportunity to receive credit without regard to sex or marital status.[14] Specific obligations include the following:

Creditors may not discourage applicants for credit on the basis of sex or marital status, prohibit persons from opening or maintaining an account in their birth-given surname or a combined surname, or prohibit spouses from maintaining separate credit accounts with the same creditor. Where spouses maintain separate accounts, each is solely liable for his or her own account, and the accounts may not be aggregated to determine permissible loan ceilings or finance charges.

Where an individual's name or marital status has changed, unless there is evidence of unwillingness or inability to repay or the credit application was based solely on the other spouse's income, the creditor may not require reapplication, change the terms of the account, or terminate the account.

Creditors may not request any information on an applicant's spouse or former spouse unless the spouse will be allowed to use the account, is contractually liable on the account, or the applicant is relying on community

property, the spouse's income, alimony, child support, or maintenance payments for repayment. The creditor may consider whether and to what extent a person must make alimony, child support, and maintenance payments, but persons receiving such income need not disclose it. If an applicant decides to disclose such income, the creditor may seek information about the person making the payments and consider the likelihood that payments will continue.

Creditors may not request information about birth control practices or childbearing intentions or capability.

Creditors may not discount income of the applicant or the applicant's spouse on the basis of sex or marital status, or discount income from part-time employment solely because it is part time, but may consider the probable continuity of such income.

Creditors may not require the signature of an applicant's spouse or other person on a credit instrument unless such a requirement is imposed without regard to sex or marital status on all similarly qualified applicants.

Where an account is established on or after November 1, 1976, and is used by both spouses or both are contractually liable for the account, the account must be designated to reflect participation by both spouses. Where an account is established before November 1, 1976, and both spouses may

use or are contractually liable for the account, the account must be designated to reflect participation by both spouses or the creditor must offer to so designate the account. Where accounts are designated to reflect participation by both spouses, information about them, sent out to consumer reporting agencies and others, must be provided in a manner which will enable the agencies and others to provide access to information about the account in the name of each spouse.

Within a reasonable time after receiving an application, creditors must notify applicants of the action taken on their application, and upon request must provide applicants who are denied credit or individuals whose accounts are terminated with the reasons for the action.

Complaint

Creditors must, in writing, provide applicants for credit with the name and address of the agency responsible for the enforcement of this act. A complaint may be filed with the Federal Trade Commission by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act, as amended. The complaint should be filed with:

Division of Special Statutes
Federal Trade Commission
Washington, D.C. 20580

If the creditor against whom the complaint is filed falls under one of the jurisdiction of one of the other designated enforcement agencies, FTC will forward the complaint to the correct agency. The agency may investigate where a complaint has been made or where there are other indications that a creditor is discriminating on the basis of sex or marital status.

Enforcement and Sanctions

Where there is an individual complaint of discrimination against a creditor, enforcement and the imposition of sanctions depend on each agency's complaint procedure.

An applicant for credit who believes she or he has been discriminated against in the provision of credit may file suit within 1 year of the alleged discriministration.

The court may order the creditor to stop discriminating on the basis of sex or marital status in the provision of credit, to pay actual damages suffered and a penalty of up to $10,000 for each aggrieved applicant, and the costs of the lawsuit.

TITLE VIII AND IX OF THE CIVIL RIGHTS ACT OF 1968 AND TITLE V OF THE NATIONAL HOUSING ACT AS AMENDED BY TITLE VIII OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974: FAIR HOUSING ACT

Under the amendments to these acts,[15] lenders providing financial assistance, such as mortgages, to persons for purposes of purchasing, constructing, improving, repairing, or maintaining a dwelling are prohibited from discriminating on the basis of race, color, religion, national origin, or sex in the extension of this assistance. Persons may not be denied membership, participation in, or access to multiple-listing services, real estate brokers, or other services, organizations, or facilities relating to the selling of renting or dwellings on these bases. In addition, those extending mortgage credit must consider the entire income of each spouse for purposes of extending mortgage loans to a married couple or to either spouse separately.

Coverage

Those who extend mortgage loans or control access to facilities and services relating to the sale or rental of dwellings must not discriminate on the basis of race, color, religion, national origin, or sex, or refuse to consider the combined income of wife and husband in the extension of mortgage credit. However, religious and private

organizations may restrict use of their noncommercial dwellings to members of that religion or organization or give preference to members.

Examples of discrimination forbidden by these amendments include refusal of a bank to consider the wife's income when a married couple applies for a mortgage loan; or, refusal of an organization of real estate brokers to accept applications for membership from women.

What Is Required

Those who extend mortgage loans or control access to facilities and services relating to the sale or rental of dwellings must afford all persons equal opportunity to receive a mortgage loan and use such facilities and services, and must consider the total combined income of marital partners in extending mortgage credit.[16]

Complaint

A complaint may be filed with the Department of Housing and Urban Development (HUD) by any person (or a representative) who believes himself or herself or any specific group of persons to be subjected to discrimination prohibited by these amendments. The written complaint should be filed with:

Department of Housing and Urban Development
451 7th St., S.W.
Washington, D.C. 20410

The complaint must be filed within 180 days of the alleged discrimination. Within 30 days after receiving a complaint, HUD will notify the complainant whether HUD intends to resolve it. If so, HUD will informally attempt to eliminate or correct the discrimination. If there is a similar State or local fair housing law, HUD will refer the complaint to the responsible State or local official or agency. If the State or local official or agency has not acted on the complaint within 30 days, HUD may then take further action.

In addition, the Department of Justice has indicated that complaints or inquiries regarding violations of the Fair Housing Act may be directed to:

Chief, Housing Section
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530

Enforcement and Sanctions

Where HUD is unable to resolve the discrimination complaint informally, either 30 days after the complaint is filed with HUD or 30 days after HUD has referred the complaint to an appropriate State or local agency, the complainant may file a civil suit to enforce these amendments. If there is a State or local judicial remedy, the civil suit must be filed in the State or local court.

Deadlines for filing suit will vary, depending on the local law. If no State or local judicial remedy is available, the civil suit may be filed in Federal court within 180 days of the alleged discriminatory act. The court may appoint an attorney for the complainant, if necessary.

The court may order the party violating the law to stop discriminating and pay damages to the victim, court costs, and the victim's attorney's fees. In addition, the Department of Justice may file suit to enforce these acts, as amended, where there is a pattern or practice of discrimination or a group of persons has been denied equal housing opportunity.

TITLE VII OF THE HOUSING ACT OF 1954

This act[17] provides Federal funds for planning and technical assistance to aid in a broad range of activities by areawide intergovernmental planning organizations. Funds may come through State agencies or directly from the Department of Housing and Urban Development (HUD), which oversees and administers 701 planning grants. These programs are prohibited from discriminating in employment and provision of services on the basis of race, color, national origin, religion, and sex, and they must provide written assurance of compliance.

Coverage

The regulations promulgated under this act forbid any program funded through this act, or anyone contracting with a funded program, from discriminating against an employee or applicant for employment on the basis of race, color, national origin, religion, or sex.

Examples of discrimination forbidden by these regulations include the refusal of a planning agency to hire women in any position for which they are qualified (as architects, or urban planning specialists, for example); or refusal of a planning agency to contract with female-owned firms.

What Is Required

A program receiving funds under this act must afford all persons equal employment opportunity, including equal access to all available benefits and services.[18]

Complaint

A complaint may be filed with the Department of Housing and Urban Development by any person (or a representative) who believes herself or himself or any specific group of persons to subjected to discrimination prohibited by regulations promulgated under this act. The complaint should be filed with:

Department of Housing and Urban Development
451 7th St., S.W.
Washington, D.C. 20410

The complaint must be filed within 180 days of the alleged discrimination, but HUD may extend this deadline. HUD will investigate where a complaint has been made or where there are other indications that a program is discriminating in violation of these regulations. HUD will then attempt to bring the program into compliance with the nondiscrimination provisions of the regulations. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of HUD to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HUD may conduct periodic compliance reviews to ensure that programs are operated without discrimination. Where a program is found to be discriminating, and HUD has found that this cannot be corrected informally, it may withhold or terminate funds to such a program. Before such action may be taken, HUD must allow for a hearing and may only withhold or terminate funds where it finds that there will not be voluntary compliance with the nondiscrimination requirement. In addition, HUD may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Housing and Community Development Act[19] provides funds and other assistance through the Department of Housing and Urban Development (HUD) to States, counties, townships, municipalities (and other local governments) to help finance community development programs. These programs undertake activities designed to eliminate slums and urban blight and to expand and improve housing and community services, and may not discriminate against any person on the basis of race, color, national origin, or sex.

Coverage

Programs receiving funds through the act must not discriminate on the basis of race, color, national origin, or sex in employment or provision of services.

Examples of discrimnation forbidden by this act include the refusal of a local community development program to hire women as administrators; or the refusal of a funded day-care center to accept children of husband-wife headed households or husband-headed households while children of female-headed households are accepted.

What is Required

A community development program receiving funds under this act must provide to all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.[20]

Complaint

A complaint may be filed with the Department of Housing and Urban Development by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act. The complaint should be filed with:

Department of Housing and Urban Development
451 7th Street, S.W.
Washington, D.C. 20410

HUD will investigate where a complaint has been made, or where there are other indications that a funded program is discriminating, and will informally attempt to bring the program into compliance with the nondiscrimination provisions of this act. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of HUD to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, HUD may conduct periodic compliance reviews to ensure that programs are operated without discrimination. Where a program is found to be discriminating and HUD has found that this cannot be corrected informally, it may withhold, reduce, or terminate funds to the program. Before such action may be taken, HUD must allow for a hearing, and may only withhold or terminate funds where it finds that there will not be voluntary compliance with the nondiscrimination requirement. In addition, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted.

SMALL BUSINESS ACT: SBA

The Small Business Act[21] created the Small Business Administration (SBA) to assist and protect the interests of small businesses and to provide loans to small businesses and to victims of catastrophes for the rebuilding of businesses and other property. The SBA may not discriminate on the basis of race, color, religion, sex, or national origin in employment or in the granting or administration of loans. In addition, no business receiving funds through SBA may discriminate in employment or provision of services on the basis of race, color, religion, sex, or national origin.

Coverage

The Small Business Act and SBA regulations[22] prohibit both SBA and small businesses which receive funds from SBA from discriminating against any person on the basis of race, color, religion, sex, or national origin.

Examples of discrimination forbidden by SBA regulations include refusal of SBA to grant a loan to a female-owned and -operated business which was otherwise qualified; refusal of a small business which has an SBA loan to hire a woman in any job classification (delivery truck driver, for example); or the maintenance of different retirement plans for women and men by a business which has received an SBA loan.

What Is Required

Both the SBA and any small businesses receiving funds from SBA must afford all persons equal employment opportunity and equal opportunity to receive all available benefits and services.

Complaint

A complaint may be filed with SBA by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by SBA regulations. The written complaint should be filed with:

Chief of the Compliance Division
Small Business Administration
1441 L St., N.W.
Washington, D.C. 20416

A complaint to the SBA must be filed within 180 days of the alleged discrimination, but SBA may extend this deadline. SBA will investigate where a complaint has been made, or if there are other indications that a small business receiving funds from SBA is discriminating. SBA will then attempt to bring the business into compliance with the nondiscrimination provisions of the act and SBA's regulations. Once a complaint has been filed, the complainant is no longer involved, and it is the responsibility of SBA to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the SBA may conduct periodic compliance reviews to insure that businesses are operated without discrimination. Where a business is discriminating and the SBA has found that this cannot be corrected informally, it may suspend, terminate, refuse, cancel, or accelerate repayment of an SBA loan from such a business. Before such action may be taken, the SBA must allow for a hearing, and must find that there will not be voluntary compliance with the nondiscrimination requirement. In addition, the SBA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

TITLE I OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, AS AMENDED BY THE CRIME CONTROL ACT OF 1973, AND THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974: LEAA

These acts as amended[23] provide Federal funds through the Law Enforcement Assistance Administration (LEAA) in the Department of Justice for programs and activities designed to reduce and prevent crime and delinquency, including community-based programs, and to improve law enforcement and the criminal justice system on State and local levels. Under these acts, any program or activity receiving such funds may not discriminate against any person on the basis of race, color, national origin or sex. All funded programs must provide written assurances of nondiscrimination to LEAA.

Coverage

These acts and LEAA regulations[24] prohibit any program or activity which receives part or all of its funds through LEAA from discriminating on the basis of race, color, national origin or sex. This provision also covers major contractors or subcontractors.

Examples of discrimination forbidden by these acts and LEAA regulations include use of differing pay scales for male and female parole officers receiving training with LEAA

funds; State use of proportionately less grant money in the construction and operation of correctional institutions housing female offenders than for those housing male offenders; or refusal to hire women as police officers in an LEAA-assisted police department.

What Is Required

A program or activity receiving funds through LEAA must afford all persons equal employment opportunity and equal opportunity to participate in all aspects of the program or activity and receive all available benefits.

Complaint

A complaint may be filed with the LEAA by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by these acts and LEAA regulations. The written complaint should be filed with:

Administrator
Law Enforcement Assistance Administration
Department of Justice
633 Indiana Ave., N.W.
Washington, D.C. 20530

The complaint must be filed within 180 days of the alleged discrimination, but this deadline may be extended. LEAA will investigate the facts and circumstances of the complaint.

If LEAA determines that discrimination exists, the administrator will notify the Governor of the State in which the program or activity is located and attempt informally to bring the program into voluntary compliance.

Once the complaint has been filed, the complainant is no longer involved, and it is the responsibility of the LEAA to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, LEAA may conduct periodic compliance reviews to ensure that programs or activities are operated without discrimination. Where a program or activity is discriminating, and LEAA has found that this cannot be corrected informally, LEAA may withhold funds to such a program or activity unless the discrimination ceases. Contractors or subcontractors which are discriminating may have their contracts terminated. Before such action may be taken, LEAA must allow for a hearing. LEAA may refer the matter to the Attorney General of the United States, with a recommendation that legal action be taken, or take any other action authorized by law.

Where a State or local government is engaged in a pattern or practice of discrimination, the Attorney General of the United States is authorized to file a civil suit.

STATE AND LOCAL FISCAL ASSISTANCE ACT OF 1972: REVENUE SHARING

This act[25] provides funds to States, counties, townships, municipalities (and other local governments), Indian tribes, and Alaskan native villages for public safety, environmental protection, public transportation, health, recreation, libraries, social services for the poor or aged, financial administration, and other expenditures.

To qualify for funds, a local government must file with the Office of Revenue Sharing in the Treasury Department a statement or assurance that it will not discriminate against any person on the basis of race, color, national origin, or sex.

Coverage

Any local government, or any program, receiving revenue sharing funds is prohibited from discriminating on the basis of race, color, national origin, or sex.

Examples of discrimination forbidden by this act include: the use of revenue sharing funds by a local government to maintain a fire department which hires only men as firefighters; use of revenue sharing funds to build recreational facilities which provide sex-segregated programs or programs for men and boys only.

What Is Required

A local government program funded under this act must give all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.[26]

Complaint

A complaint may be filed by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act. The written complaint should be filed with:

Director, Office of Revenue Sharing
U.S. Department of Treasury
15th St. and Pennsylvania Ave., N.W.
Washington, D.C. 20220

There are no deadlines for filing a complaint.

Once a complaint has been received, the Secretary of the Treasury will notify the chief executive of the government operating the program in which discrimination is alleged that such a complaint has been filed. If the Secretary has reason to believe (on the basis of the complaint) that there is discrimination, he or she will investigate the facts and circumstances of the complaint. Thus, it is within the discretionary power of the Secretary to determine whether to investigate or not.

If the Secretary determines that there is discrimination, notification is sent to the Governor of the State in which the program is located. The Governor must then attempt informally to bring the program into voluntary compliance within 60 days. Once a complainant has filed a complaint with the Secretary, she or he is no longer involved; it is the responsibility of the Secretary to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may choose to conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a local government program discriminates and the Secretary has found that this cannot be corrected informally, funds may be withheld or terminated. In order to do this the Secretary must allow for a hearing and must file a report of the circumstances and grounds for the action with the House Committee on Ways and Means and the Senate Committee on Finance. The Secretary may also refer the matter to the Attorney General of the United States with a recommendation that legal action be taken or take any other action authorized by law.

In addition, where a State or local government is found to be engaged in a pattern of discrimination, the Attorney General is authorized to file a civil suit.

TITLE I OF THE FEDERAL-AID HIGHWAY ACT OF 1973

The Federal-Aid Highway Act[27] authorizes money to be spent through State highway departments to construct the interstate highway system and to build or improve certain roads and streets. The act provides that no person may be excluded form participation in the program, be denied benefits of the program, be denied employment in the program, or otherwise be subjected to discrimination on the basis of sex.

Coverage

All State or local government highway departments, anyone contracting or subcontracting with a highway department, or anyone otherwise participating in a project funded by this act are prohibited from practicing discrimination on the basis of sex.

Examples of such discrimination include the failure of a State highway department to consider women applicants in the selection of contractors, or the refusal of a contractor to hire women on road crews.

What Is Required

Each State receiving funds under this act must have an equal employment opportunity program. The Secretary of Transportation requires each State to include notification

of the specific equal employment opportunity responsibilities of the contractor in the advertised specifications of the contract.[28]

Complaint

A complaint may be filed with the Office of Civil Rights of the Department of Transportation (DOT) by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination under this act. The complaint should be filed with:

Director
Office of Civil Rights
Department of Transportation
400 7th Street, S.W.
Suite 10217
Washington, D.C. 20590

A complaint made to the DOT must be filed within 180 days of the alleged discrimination, but DOT may extend this deadline. The Office of Civil Rights of DOT is responsible for processing and investigating complaints and will attempt to secure voluntary compliance. Once a complaint has been filed with DOT, the complainant is no longer involved; it is the responsibility of the Department to resolve it.

Enforcement and Sanctions

Besides Department of Transportation investigations initiated by a complaint, the Federal Highway Administration (FHWA) may conduct periodic compliance reviews to ensure that programs are operated without discrimination. Where a program is discriminating and the Federal Highway Administration has found that this cannot be corrected informally, it may withhold or terminate funds to the program. To do this FHWA must allow for a hearing and may only cut off funds where it has found that there will not be voluntary compliance with the nondiscrimination provision of the act. In addition, FHWA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

TITLE III OF THE DISASTER RELIEF ACT OF 1974

The Disaster Relief Act[29] enables the Federal Government to assist State and local governments in alleviating problems which result from major disasters, such as floods or tornadoes. Programs under the act provide for temporary housing assistance, removal of debris, housing and business loans, legal services, and other essential assistance to victims of disasters. These programs are to be administered without discrimination against potential recipients on the basis of race, color, religion, nationality, sex, or economic status.

Coverage

Relief organizations, as a condition of participation in the distribution of assistance, must comply with nondiscrimination requirements of the Federal Disaster Assistance Administration. Distribution of supplies, the processing of applications, and other relief and assistance activities are to be accomplished without discrimination.

Examples of discrimination prohibited by the act include rejection of a family's housing loan application because the head of the household is a woman, or refusal to provide a loan to a female-owned business.

What Is Required

All programs administered or authorized under this act must give all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits, services, and other assistance.[30]

Complaint

No formal procedures for filing of complaints have been established by the Federal Disaster Assistance Administration. However, a person (or a representative) who believes herself or himself to be subjected to discrimination prohibited by this act may file a complaint with the civil rights compliance officer in the disaster field office located at the scene of the disaster. A written complaint may also be filed with:

Federal Coordinating Officer
Federal Disaster Assistance Administration
Department of Housing and Urban Development
451 Seventh Street, S.W.
Washington, D.C. 20410

or

Any of the 10 Regional Offices of the Federal Disaster Assistance Administration.

Enforcement and Sanctions

Where a program is discriminating and the director of the Federal Disaster Assistance Administration has found that this cannot be corrected informally, she or he may

refer the matter to the Attorney General of the United States with a recommendation that legal action be taken. In addition, relief organizations found to be discriminating can be barred from participating in the distribution of assistance or supplies.

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965

This act[31] provides Federal assistance, in the form of information services, planning, assistance, grants, and loans to areas with severe unemployment and low family income. The purpose of such assistance is to provide employment opportunities and services for the residents and to prevent outward migration. Assistance is granted for development of public works and for business loans for industrial and commercial facilities. Federal guarantees also may be provided for private working capital loans. Areas eligible for this assistance are designated "Redevelopment Areas" and "Economic Development Districts." Regional Planning Commissions may be established to serve multi-State areas. Representatives of each State advise the Secretary of Commerce on matters of economic development in their area.

The Economic Development Administration (EDA) in the Department of Commerce administers the act. The EDA is prohibited from providing assistance for any program unless the grant, contract, loan, or agreement to receive assistance specifies that the program will not discriminate on the basis of sex in providing employment, benefits, or services.

Coverage

Programs which receive assistance through this act are prohibited from discriminating on the basis of sex. This prohibition also applies to anyone who contracts or subcontracts with a funded program and to anyone who works with a program by agreement.

Examples of discrimination forbidden by this act include refusal of a funded training program to admit unemployed women unless they are heads of households; refusal of a contractor in a funded program to accept bids for subcontracts from female-owned businesses.

What Is Required

A program receiving assistance under this act must provide to all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services without regard to sex.[32]

Complaint

A complaint may be filed with the EDA by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act. The written complaint should be filed with:

Economic Development Administration
Department of Commerce
14th between Constitution Ave. and E St., N.W.
Washington, D. C. 20230

Complaints must be filed within 90 days of the alleged discrimination, but EDA may extend this deadline. EDA will make an investigation where a complaint has been made or where there are other indications that the assisted program is discriminating on the basis of sex. EDA will informally attempt to bring the program into compliance with the act's prohibition against sex discrimination. The investigation is not limited to the specific complaint. Once a complaint has been filed with EDA, the complainant is no longer involved, and it is the responsibility of EDA to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, EDA may conduct periodic compliance reviews to ensure that programs are operating without discrimination. Where a program is found to be discriminating and EDA has found that this cannot be corrected informally, the Secretary of Commerce may terminate, suspend, or refuse to grant assistance to such a program. In order to do this, the Secretary must allow for a hearing, and may only terminate funds where it is found that there will not be voluntary compliance with the nondiscrimination provision of the act. In addition, the Secretary may refer the matter to the

Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

APPALACHIAN REGIONAL DEVELOPMENT ACT OF 1965, AS AMENDED BY THE APPALACHIAN REGIONAL DEVELOPMENT ACT AMENDMENTS OF 1971

This act provides Federal funds for planning and technical assistance to aid the economic, physical, and social development of the Appalachian region. Programs developed under the act are administered by the Appalachian Regional Commission which may directly fund a program or coordinate the funding programs of other Federal agencies.

Programs included under the jurisdiction of the Commission cover such varied areas as highway development, conservation, housing development, vocational education, health, and child care projects. Such programs may not discriminate against any program participant on the basis of sex.

Coverage

Programs funded or coordinated under this act are prohibited from discriminating on the basis of sex.

Examples of discrimination forbidden by the act include the refusal of an employer in a funded program to hire women with preschool age children, or refusal of the administrator of a vocational training program to admit women to certain training courses (auto mechanics, for example).

What Is Required

A program receiving funds under this act must give all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.[34]

Complaint

A complaint may be filed with the Appalachian Regional Commission or with the funding source by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act. Before filing a complaint, the individual should contact the program to determine the funding source. Where the Appalachian Regional Commission is the funding source, the program is required to develop complaint procedures. Where the Appalachian Regional Commission merely coordinates the funding of other agencies of the Federal Government, the complainant must use the complaint procedures of the funding agency.

If a complainant does not know with whom to file, she or he should contact:

Executive Director
Appalachian Regional Commission
166 Connecticut Ave., N.W.
Washington, D.C. 20235

Enforcement and Sanctions

The enforcement and sanctions depend upon the complaint procedure established by the funding agency.

FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED BY THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972

This act[35] provides Federal funds for the prevention, reduction, and elimination of water pollution in the United States. Funds and technical assistance may be provided to State and local governments and to institutions, organizations, or individuals who are conducting research, developing programs, building facilities such as sewage treatment plants, or training persons to work in water pollution control programs.

The Environmental Protection Agency (EPA) is responsible for approving State guidelines for programs funded under this act and for assuring that the programs are in compliance with the nondiscrimination provision of the act, as amended. Any program receiving funds under this act may not discriminate against any person on the basis of sex.

Coverage

Any local government or any program receiving funds through this act is prohibited from discriminating on the basis of sex.

Examples of discrimination forbidden by the act include the refusal by a research institution funded through the act

to provide fellowships for female as well as male researchers, or the refusal by a contractor building a sewage treatment plan to hire women in any job classification (construction equipment operator, for example).

What Is Required

A local government or program funded under this act must provide to all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.[36]

Complaint

A complaint may be filed with the Environmental Protection Agency by any person (or a representative) who believes herself or himself or any specific group of persons to be subjected to discrimination prohibited by this act. The written complaint should be filed with:

Division of Civil Rights and Urban Affairs
Environmental Protection Agency
401 M St., S.W.
Washington, D.C. 20460

There are no deadlines for filing a complaint.

The Environmental Protection Agency will make an investigation where a complaint has been made or if there are other indications that the funded program is discriminating and will informally attempt to bring the

program into compliance with the nondiscrimination provision of the act. Once the complaint has been filed, the complainant is no longer involved and it is EPA's responsibility to resolve it. The complainant has no right under this act to participate in the hearing, if there is one, or to have his or her individual complaint resolved.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the EPA may conduct periodic compliance reviews to insure that programs are operated without discrimination. Where a program is discriminating and EPA has found that this cannot be corrected informally, it may withhold or terminate funds. To do this, EPA must allow for a hearing and may only cut off funds if it find that there will not be voluntary compliance with the nondiscrimination provision of the act. In addition, EPA may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

The Department of the Interior oversees a wide variety of programs and provides various types of assistance such as technical assistance, funds, and land for other programs. The Department has jurisdiction over such varied areas as conservation, Indian affairs, recreation, parks, public works, public lands, and natural resources. Programs in these areas may not discriminate on the basis of race, color, sex, or national origin, and written assurance of nondiscrimination must be provided to the Department of the Interior.[37]

Coverage

Regulations prohibit discrimination on the basis of race, color, sex, or national origin in programs receiving assistance through the Department of the Interior. The prohibition also applies to anyone who contracts or subcontracts with any funded program or who works with such a program by agreement.

Examples of discrimination forbidden by these regulations include the refusal of a State park, using lands granted by the Department of the Interior, to permit females

to participate in all camp programs or to refuse to hire women in any job classification, lifeguard, for example.

What Is Required

A program receiving assistance through the Department of the Interior must give all persons an equal opportunity to participate in all aspects of the program and to receive all available benefits and services.

Complaint

A complaint may be filed with the Secretary of the Interior by any person (or a representative) who believes herself or himself of any specific group of persons to be subjected to discrimination prohibited by these regulations. The written complaint should be filed with:

Secretary of the Interior
Department of the Interior
C Street between 18th and 19th Sts., N.W.
Washington, D.C. 20240

A complaint must be filed within 180 days of the alleged discrimination, but the Secretary may extend the deadline. The Secretary will make an investigation where a complaint has been made, or where there are other indications that the assisted program is discriminating, and will informally attempt to bring the program into compliance with the Department's regulations prohibiting discrimination. Once the complaint has been filed, the

complainant is no longer involved, and it is the responsibility of the Secretary to resolve it.

Enforcement and Sanctions

In addition to investigations initiated by a complaint, the Secretary may conduct periodic compliance reviews to ensure that programs are operated without discrimination. Where a program is discriminating and the Secretary has found that this cannot be corrected informally, she or he may withhold or terminate assistance to such a program. In addition, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that legal action be taken, or take any other action authorized by law.

Notes to Section II

1. 29 U.S.C. §801 et seq. (Supp. III, 1973). Replaces the Emergency Employment Act of 1969 and the Manpower Development and Training Act of 1962.

2. 29 C.F.R. Parts 96, 97, 98 (1974).

3. 42 U.S.C. §601 et seq. (Supp. II, 1973).

4. 40 Fed. Reg. 43176 (1975) (to be codified at 29 C.F.R. §§56.34(a) (6), 56.36).

5. 40 Fed. Reg. 43188 (1975) (to be codified at 45 C.F.R. §§224.34(a)(6), 224.36).

6. 29 C.F.R. §31.7 et seq. (1974); 45 C.F.R. §80.7 et seq. (1974).

7. Under WIN regulations, DOL has the power to reduce or terminate grants to WIN programs; therefore, it is probably more advantageous to file complaints with DOL instead of HEW.

8. 20 U.S.C. §1681 et seq. (Supp. IV, 1974).

9. 40 Fed. Reg. 24137 (1975) (to be codified at 45 C.F.R. Part 86). Included as Appendix IV of this handbook.

10. 20 U.S.C. §1681(a)(6) (Supp. IV, 1974) exempts fraternities and sororities from the provisions of Title IX.

11. 42 U.S.C. §201 et seq. (1970); 42 U.S.C. §292 et seq. (Supp. III, 1973); 42 U.S.C. §296 et seq. (Supp. III, 1973).

12. 40 Fed. Reg. 28573 (1975) (to be codified at 45 C.F.R. Part 83).

13. 15 U.S.C. §1601 et seq. (1970); 15 U.S.C. §1691 et seq. (Supp. IV, 1974).

14. 40 Fed. Reg. 49306 (1975) (to be codified at 12 C.F.R. Part 202 (Regulation B)). Included as Appendix V of this handbook.

15. 42 U.S.C.A. §3601 et seq. (1973); 12 U.S.C.A. §1731 et seq. (1969); 42 U.S.C.A. §§3604, 3605, 3606 (Supp., 1975); 12 U.S.C.A. §1735 f-5 (Supp., 1975).

16. 12 U.S.C.A. §1735 f-5 (Supp., 1975); 42 U.S.C.A. §§3604, 3605, 3606, 3631 (Supp., 1975).

17. 40 U.S.C. §460 et seq. (1970).

18. 24 C.F.R. Part 600 (1974).

19. 42 U.S.C.A. §5301 et seq. (Supp., 1975).

20. 42 U.S.C.A. §5309 (Supp., 1975).

21. 15 U.S.C. §631 et seq. (Supp. III, 1973).

22. 13 C.F.R. Part 113 (1975); 13 C.F.R. §105.735-5-4 (1975); paragraph 7 of SOP 90-30 (Internal regulations of the SBA). ?

23. 42 U.S.C. §3701 et seq. (Supp. II, 1973).

24. 28 C.F.R. §42.201 et seq. (1974). LEAA also has issued a guideline, 39 Fed. Reg. 32159 (1974), applying to all State Planning Agency Supervisory Boards and Regional Planning Unit Supervisory Boards which administer LEAA funds, prohibiting denial appointment or selection to serve on either board on the basis of race, color, sex, or national origin.

25. 31 U.S.C. §1221 et seq. (Supp. III, 1973).

26. 31 C.F.R. Part 51 (1974).

27. Pub. L. No. 93-87 (Aug. 13, 1973) (codified in scattered sections of 23, 49 U.S.C. (Supp. III, 1973).

28. Transmittal 7, "Interim Guidelines for Title VI Implementation and Reviews" (Federal Highway Administration document, which includes sex discrimination.)

29. 42 U.S.C.A. §5141 et seq. (Supp., 1975).

30. 39 Fed. Reg. 28215 (1974) (to be codified at 24 C.F.R. Part 2205).

31. 42 U.S.C. §3121 et seq. (Supp. III, 1973).

32. 13 C.F.R. Part 311 (1975).

33. 40 U.S.C. App. §1 et seq. (1970); 40 U.S.C. App. §105 et seq. (Supp. III, 1973).

34. 40 U.S.C. App. §223 n. (Supp. III, 1973).

35. 33 U.S.C. §1251 et seq. (Supp. III, 1973).

36. 38 Fed. Reg. 15457 (1973) and 39 Fed. Reg. 32989 (1974) (to be codified at 40 C.F.R. 12).

37. 43 C.F.R. Part 17 (1974). Regulations issued by the Department of the Interior to effectuate Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d-1, and amended in 1973 to include sex discrimination.

III. FEDERAL REGULATORY SYSTEM

Many of the Nation's largest industries, including the broadcast media, the household moving industry, and stocks and securities firms, are regulated by agencies of the Federal Government; some require governmental permission for their existence. This Federal relationship provides a potentially powerful weapon with which to eliminate sex discrimination. Unfortunately, few of the regulatory agencies have adopted regulations prohibiting sex discrimination. This section delineates the extent to which Federal requlatory power has been used to prohibit sex discrimination.

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission regulates the broadcast media and telephone and telegraph companies[1]. No radio or television station or telephone or telegraph company may operate without a permit or license from the FCC.

Employment

FCC regulations provide that no person employed by the media or by any company regulated by the FCC may be discriminated against in employment on the basis of race, color, religion, sex, or national origin.[2]

Programming

The FCC requires that programming be responsive to community needs, which includes the needs and concerns of women of all races and ethnicities.

Coverage

All companies or stations regulated or licensed by the FCC are required to comply with the regulations established by the FCC.

What Is Required

Employment

Each station or company regulated by FCC must establish and carry out an equal employment opportunity program

designed to assure equal opportunity in every aspect of employment policy and practice.[3] This program must be submitted to the FCC for approval when applying for license renewal. In addition, stations and companies must submit annual reports to the FCC indicating whether any complaints of discriminatory employment practices have been filed. FCC form 395 must be filed annually with FCC and at the station, indicating the race and sex of employees and the jobs they hold. This form and the equal opportunity program are available for public inspection.

Programming

In applying for license renewals every 3 years, stations must prove that their programming is serving community needs. They must conduct a community assessment, which includes consulting with community leaders to ascertain community needs. They must submit to the FCC a list of 10 significant community problems and samples of programs designed to address those problems.[4] This is filed with FCC and at the station and is available for public inspection.

Complaints

Employment

A complaint may be filed with the FCC by any person (or a representative) who believes herself or himself or any

specific group of persons to be subjected to employment discrimination prohibited by FCC regulations. The written complaint should be filed with:

Federal Communication Commission
Industry Equal Employment Office
Rm. 646
1919 M St., N.W.
Washington, D. C. 20554

Complaints within the jurisdiction of the Equal Employment Opportunity Commission will be forwarded to that agency for investigation and disposition. Where the EEOC does not have jurisdiction but the discrimination is prohibited by State or local law, the complaint will be forwarded to the appropriate State agency. Complaints which do not come under either EEOC or State jurisdiction will be handled by the FCC. The FCC also will investigate complaints against a station or company which it regulates if a pattern of discrimination in employment practices is alleged.

Programming

A written complaint of discrimination in programming may be filed with the FCC at the address listed above. However, the FCC does not normally investigate complaints alleging racial, religious, or sexist criticism, ridicule, or humor because it is prohibited by statute from censoring program material. Such complaints, and complaints alleging

lack of programming responsive to the needs and interests of women can, however, be relevant to the license renewal process if these complaints reveal a station's failure to be responsive to community needs.

To influence the license renewal procedure, individuals and community groups may file a petition to deny renewal of a station's license. Deadlines for filing renewal petitions vary by region. The FCC will provide deadline information for any area, if requested. Petitions should be filed with the FCC and with the station. The individuals or groups petitioning to deny renewal of a station's license must demonstrate that they are responsible spokespersons for the community in which the station is located and show specific areas that indicate lack of responsiveness to community needs. The station will subsequently file a formal reply in opposition to the petition to deny its license. FCC has the option to hold hearings concerning these petitions. The petitioner may enter into a formal agreement with the station to modify station policy. This agreement can become an amendment to the license renewal application.

Examples of lack of responsiveness to the needs of women in programming include inadequate news coverage of issues and events of concern to women such as child care legislation, ratification of the equal rights amendment, and

women's participation in athletic events; or the failure to provide news programs and public service announcements during the daytime hours, when the majority of viewers are women.

Enforcement and Sanctions

Employment

The FCC may refuse to grant license or permits to applicants or may revoke or refuse to renew existing licenses or permits if a station or company is found to be discriminating on the basis of race, color, religion, sex, or national origin in employment practices.

Programming

Failure of a broadcast licensee to provide programs addressing community needs, including programs meeting the needs of women and minority group members, can result in revocation or suspension of a broadcast license during the license renewal process.

FEDERAL HOME LOAN BANK BOARD

The Federal Home Loan Bank Board[5] is an independent agency within the executive branch which provides flexible credit reserves for member savings institutions engaged in home mortgage lending.

A 1973 amendment to the Board's regulations includes statements of policy, one of which provides that discrimination on the basis of sex or marital status is an unacceptable practice for covered lending institutions.[6] Preexisting regulations prohibit discrimination on the basis of race, color, religion, or national origin.

Coverage

All lending institutions that are members of the Federal Home Loan Bank are covered. These include Federal savings and loan associations, insurance companies, building and loan and homestead associations, and savings and cooperative banks.

Examples of prohibited discrimination include the refusal of a savings and loan association to consider the total income of both spouses in determining the mortgage eligibility of a married couple, or the refusal of an insurance company to provide mortgages to single women on the same basis as to single men.

What Is Required

A lending institution that is a member of the Federal Home Loan Bank Board may not discriminate on the basis of race, color, religion, national origin, or sex.[7]

Complaint

A complaint may be filed with the Federal Home Loan Bank Board by any person (or a representative) who believes herself or himself to be subjected to discrimination prohibited by this act. The written complaint should be filed with:

Office of Housing and Urban Affairs
Federal Home Loan Bank Board
101 Indiana Ave., N.W.
Washington, D.C. 20552

An investigation will be made by the FHLBB of the alleged violation, and the investigator will attempt to bring the alleged violator into compliance by informal means.

Enforcement and Sanctions

Where a member of the Federal Home Loan Bank is found to be discriminating and this cannot be corrected informally, the Board may issue a cease and desist order and thus force the institution to comply.

Notes to Section III

1. 47 U.S.C. §151 et seq. (1970).

2. 47 C.F.R. §§23.55, 73.125 (1974).

3. Id.

4. Federal Communications Commission, Broadcast Application Form, Section 303A. [Federal Home Loan Bank Board]

5. 12 U.S.C. §1437 et seq. (1970).

6. 12 C.F.R. §531.8(c)(1) (1974).

7. 12 C.F.R. §529 et seq. (1974).

IV. FEDERAL ADVISORY AND INFORMATIONAL PROGRAMS

A small number of Federal agencies and programs exist which focus entirely or partially on the rights, responsibilities, and role of women in American society. None of these agencies and programs have enforcement powers; rather, their functions are advisory and informational. This section describes the various functions and responsibilities of these agencies and programs.

UNITED STATES COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights was established by the Civil Rights Act of 1957, which was amended in October 1972[1] to extend the Commission's jurisdiction to include sex discrimination, in addition to discrimination on the basis of race, religion, color, or national origin[2].

The Commission is a bipartisan, independent agency whose six commissioners are appointed by the President and confirmed by the Senate. The Commission is charged with the responsibilities of factfinding and reporting on civil rights problems relating to minorities and women and with making recommendations for corrective action to the President and the Congress. The function of the Commission is purely investigatory and factfinding. It does not adjudicate and it cannot take any affirmative action which will affect an individual's legal rights. Its factfinding may subsequently be used as a basis for judicial, legislative, or executive action.

To carry out its factfinding responsibility, the Commission has the power to hold public hearings, to issue subpenas, and to take testimony under oath. The Commission also utilizes other appropriate factfinding research tools.

The Commission serves as a national clearinghouse for information regarding denials of equal protection of the laws on the basis of race, color, religion, sex, or national origin. As such, it publishes a wide variety of materials pertaining to the civil rights of minorities and women.

The Commission has established State Advisory Committees (one in each State and the District of Columbia) to assist in its factfinding, investigative, and clearinghouse functions. These advisory committees are composed of citizens who serve without compensation and who are knowledgeable about local and State civil rights problems. The committees issue reports to the Commission which are published when appropriate. They also make recommendations which the Commission may use in its reports to the President and Congress.

The Commission has two units which are of special significance in the context of this publication: the Complaints Unit and the Women's Rights Program Unit.

The Complaints Unit does not investigate complaints; however, it refers them to the appropriate departments or agencies for enforcement. In cases where no enforcement mechanism exists, the Complaints Unit responds to the complainant with advice and recommendations.

The Women's Rights Program Unit coordinates the implementation of the Commission's jurisdiction over sex discrimination. The unit identifies and evaluates women's rights issues, proposes Commission hearings, studies, and reports, and is involved in developing and implementing programs to investigate issues of concern to women of all races and ethnicities. The unit organizes and maintains liaison with national women's rights organizations, Federal and State agencies, and private research institutions concerned with women's rights issues.

Inquiries may be addressed to:

U.S. Commission on Civil Rights
1121 Vermont Ave., N.W.
Washington, D.C. 20425

CITIZENS' ADVISORY COUNCIL ON THE STATUS OF WOMEN

The Citizens' Advisory Council on the Status of Women was established by Executive Order 11126 on November 1, 1963, amended by Executive Order 11221 on May 6, 1965, and renewed by Executive Order 11827 on January 7, 1975.[2] The Council consists of 20 members appointed by the President, one of whom is designated by the President to serve as chairperson.

The Council functions as a catalyst to action for private institutions, organizations, and individuals working for improvement of the status of women. The Council periodically reviews and evaluates the degree of progress of these organizations toward achieving full participation of women in American life.

The Council produces numerous publications which analyze issues of relevance to women. These include substantive analyses of the history and potential effects of the equal rights amendment on Federal and State laws and official practices relating to alimony, child support, and custody laws; property rights of married women; "protective" labor laws which apply only to women; military service; jury service; and Social Security.

The Council also produces annual reports on the current status of American women, including information on employment and employment-related issues, education, the equal rights amendment, the military service, credit, employment training, Supreme Court decisions of significance to the changing status of women, and child care.

The Citizens' Advisory Council on the Status of Women also is empowered to advise the Interdepartmental Committee on the Status of Women and to recommend appropriate action to improve the status of women.

Inquiries may be addressed to:

Citizens' Advisory Council on the Status of Women
Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

INTERDEPARTMENTAL COMMITTEE ON THE STATUS OF WOMEN

The Interdepartmental Committee on the Status of Women was established by Executive Order 11126 on November 1, 1963, and amended by Executive Order 11221 on May 6, 1965.[3] The Committee is composed of Cabinet officers (the Secretaries of Labor; State; Defense; Agriculture; Commerce; Health, Education, and Welfare; and the Attorney General); the Chairperson of the Equal Employment Opportunity Commission; the Director of the Office of Economic Opportunity; an Assistant Secretary of Labor; and the Director of the Women's Bureau who serves as executive vice chairperson. The Secretary of Labor is the chairperson.

The Interdepartmental Committee is empowered to review and evaluate the progress of Federal agencies in advancing the status of women, to serve as a clearinghouse for information, to encourage research, and to stimulate cooperation and sharing of information among agencies and organizations working to improve the status of women in the areas of education, home and community activities; employment; social insurance; taxes; civil and political rights; and labor legislation, among others. The Interdepartmental Committee, in consultation with the Citizens' Advisory Council on the Status of Women, is

directed to produce an annual report on the status of women by Executive Order 11221.

Inquiries may be addressed to:

Interdepartmental Committee on the Status of Women
c/o Director, Women's Bureau
Department of Labor
200 Constitution Ave., N.W.
Washington, D. C. 20210

or

Citizen's Advisory Council on the Status of Women
Department of Labor
200 Constitution Ave., N.W.
Washington, D. C. 20210

FEDERAL WOMEN'S PROGRAM, U. S. CIVIL SERVICE COMMISSION

The Civil Service Commission established the Federal Women's Program to enhance employment and advancement opportunities for women in the Federal Government. Executive Order 11478 integrated the Federal Women's Program into the Government's overall equal employment opportunity program. The Equal Employment Opportunity Act of 1972 provided a statutory base for equal opportunity in the Federal Government.

The Federal Women's Program, administered by a director, is located in the Civil Service Commission. Civil Service regulations require that each Federal agency designate a Federal Women's Program coordinator to advise the agency's director of equal employment opportunity on matters affecting the employment and advancement of women and to assure that necessary specific actions are taken to establish and maintain equal opportunity for women.

The primary program efforts of the Federal Women's Program have been directed toward affirmative action in the Federal Government. The program seeks to create the legal, regulatory, and administrative framework for achieving equality of opportunity for women. The Federal Women's Program coordinators attempt to bring agency employment

practices into closer accord with merit principles through the elimination of practices, attitudes, customs, and habits which have previously denied women entry into certain occupations and access to high level positions throughout the career service. Finally, the Federal Women's Program encourages qualified women to compete in examinations for Federal employment and to participate in training programs leading to advancement.

The Federal Women's Program also focuses on issues of concern to female Federal employees, including extension of part-time employment opportunities and development of child care centers. The program also encourages the inclusion of women in all types of training programs and takes other actions to ensure that women employees are participating fully in the activities of their agencies (promotion panels, detail assignments, planning committees, and professional conferences, for example.)

Inquiries may be addressed to:

Federal Women's Program
U.S. Civil Service Commission
1900 E St., N.W. Rm. 7540
Washington, D.C. 20415

WOMEN'S BUREAU, DEPARTMENT OF LABOR

The Women's Bureau, located in the Employment Standards Administration of the Department of Labor, was established by Congress in June 1920. The Bureau has statutory responsibility, under its enabling legislation, for the formulation of standards and policies which will promote the welfare of wage-earning women, improve their working conditions, and advance their opportunities for profitable employment.

The Director of the Women's Bureau, appointed by the President and approved by the Senate, is designated by the Secretary of Labor as Special Counselor to the Secretary for women's programs.

Throughout the past 54 years, the Women's Bureau has significantly broadened the scope of its concerns so that today the Bureau addresses itself to the multiple roles of women in American society, all of which are related to their participation in the work force.

The Women's Bureau initiates conferences on such topics as the problems of working women, the education and training of women, and legislation relating to women workers. In cooperation with commissions on the status of women, educational organizations, women's groups, State labor

departments, and trade unions, the Women's Bureau plans and conducts conferences, seminars, and symposia on various issues related to the economic role and status of women. The Bureau also calls into consultation individuals and organizations working in such specific areas as child care, working mothers, wages and working conditions of household workers, and aid to disadvantaged girls and women.

The publications of the Women's Bureau provide background information, current statistics, and analyses of data on various issues relating to the status of women in the labor force. Publications address career opportunities for women, trends in women's employment, vocational education and counseling, minimum wage, equal pay and opportunity, political and legal status of women, legislation affecting women, women in poverty, child care for working mothers, and women's educational attainment, labor union participation, and economic status.

Inquiries may be addressed to:

Women's Bureau
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

WOMEN'S ACTION PROGRAM

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

The Women's Action Program was created by the Secretary of Health, Education, and Welfare (HEW) on February 17, 1971, in response to a recommendation of the President's Task Force on the Rights and Responsibilities of Women. The program was established with a dual focus--on eliminating discrimination against women within the Department of Health, Education, and Welfare and on addressing problems of sex discrimination in society as a whole.

The Women's Action Program seeks to ensure that all HEW programs are relevant to the needs of all women in society who are presently or potentially recipients of HEW services and to establish systems for monitoring the effectiveness of these programs toward improving the status of women. The Women's Action Program also seeks to make HEW program managers more aware of the unique needs of minority women and of socially disadvantaged and physically handicapped women for the ultimate purpose of improving services to these women. The program seeks to increase HEW's research efforts to improve the status of women.

The Women's Action Program also attempts to increase opportunities for women to serve on public advisory

committees, to receive contracts and grants from the Department of Health, Education, and Welfare, and to perform as staff at all levels within the Department (in support of the Department's Federal Women's Program).

The activities of the Women's Action Program involve analysis of HEW programs to assess their impact on women and to recommend changes in these programs to render them more responsive to the needs of women. The Women's Action Program also works with other HEW staff to identify and attempt to eliminate sex discrimination within the agency itself.

Initially, the program made a systematic analysis of the needs for change and recommended goals and methods of change to be pursued by the Department. The "Report of the Women's Action Program--January, 1972" gives these analyses and recommendations and sets forth an agenda of positive action to help overcome the cumulative effects of institutionalized discrimination against women.

Inquiries may be addressed to:

Women's Action Program
Department of Health, Education, and Welfare
South Portal Bldg.
200 Independence Ave., S.W.
Washington, D.C. 20201

WOMEN'S EDUCATIONAL EQUITY ACT OF 1974: Advisory Council on *Women's Educational Programs*, Department of Health, Education, and Welfare

The Women's Educational Equity Act[7] provides for grants and contracts with public agencies, private nonprofit organizations, and individuals for programs to develop educational equity for women at all levels, including preschool, elementary, secondary, higher, and adult education. These grants and contracts are administered by the Commissioner of Education in the Department of Health, Education, and Welfare (HEW). Program activities designed to eliminate inequities may include: research; development, evaluation, and dissemination of educational materials; training for educational personnel; guidance and counseling activities including the development of nondiscriminatory testing instruments; and development of continuing adult education programs and programs for unemployed and underemployed women.

This act established in the Office of Education an Advisory Council on Women's Educational Programs to develop criteria for program priorities and to advise the Commissioner on policy and allocation of funds relating to educational equity for women. This Council consists of 17

persons (some of whom are students) who are representative of the general public and versed in the role and status of women in American society. Ex-officio members include the Chairman of the U.S. Commission on Civil Rights, the Director of the Women's Bureau of the Department of Labor, and the Director of the Women's Action Program of HEW. The Council is required to review a comprehensive report on sex discrimination in education prepared by the Commissioner and to make appropriate recommendations including legislation. The Commissioner annually prepares a report describing programs and activities assisted under this act which is made available to interested persons.

Inquiries may be addressed to:

Advisory Council on Women's Educational Programs
1832 M St., N.W.
Suite 821
Washington, D.C. 20036

Notes to Section IV

1. 42 U.S.C. ¢1975 (1970); 42 U.S.C. ¢1975c(a) (Supp. III, 1973).

2. 3 C.F.R., 1959-63 Comp., p. 791; 3 C.F.R., 1964-65 Comp., p. 305; 40 Fed. Reg. 1217 (1975).

3. 3 C.F.R., 1959-63 Comp., p. 791; 3 C.F.R., 1964-65 Comp., p. 305.

4. 3 C.F.R. 207 (1974).

5. 5 C.F.R. Part 713 (1975).

6. 29 U.S.C. ¢11 et seq. (1970).

7. 20 U.S.C.A. ¢1866 et seq. (Supp., 1975).

GLOSSARY

Affirmative Action Plan--An affirmative action plan (AAP) is usually a formal plan which develops a specific program to eliminate, limit, or prevent discriminatory treatment on the basis of race, ethnicity, and sex by employers and educational institutions; some are required by law and others are developed voluntarily. The AAP is often designed to remedy the effects of past discrimiantion and prevent its recurrence. In employment, an AAP usually involves a work force utilization analysis, the establishment of numerical goals and timetables to increase utilization of underrepresented classes, explanation of the methods to be used to eliminate discrimination, and establishment of responsibility for implementing the program. (See appendix II.)

Bona Fide Occupational Qualification--A bona fide occupational qualification (BFOQ) is a job qualification, not necessarily based on merit, education, or experience, which is reasonably necessary to the normal operation of the particular business or enterprise and reasonably related to the job. The use of sex as a bona fide occupational qualification has been declared illegal, in most instances, by the Equal Employment Opportunity Commission (EEOC). (See appendix I, p. 124.) The EEOC has interpreted the

applicability of sex as a BFOQ narrowly; its Guidelines on Discrimination Based on Sex offer only two occupations in which sex may be used as a BFOQ--actor and actress.

Cease and Desist Order--A cease and desist order is the action of an authorized agency or a court ordering a particular party, organization, employer, or industry to stop enforcing an illegal policy or to stop certain illegal actions or practices.

Class Action--A class action is a civil suit brought by one or more persons on behalf of all persons who are similarly situated or who are subject to similar discrimination.

Complaint--A complaint is the formal notification of alleged discrimination to the proper authority by a complainant, who may be a person, group, or organization. The complaint should contain sufficient information to permit an investigation, including as much of the following as the complainant can provide:

name, address, phone number of complainant;

name, address, phone number of party against whom complaint is made; complaint should include name of complainant's supervisor and name, address, and phone number of employer;

name of agency, department, and/or person (and title) to whom complaint is being made;

date of filing complaint;

request that complaint be considered a formal complaint of discrimination;

explanation of type of discrimination (i.e., sex, race, national origin, religion);

plain and concise statement of facts and circumstances of each allegation of discrimination;

date of discriminatory act or notification of a continuing policy of discrimination;

any other relevant information which will aid in understanding complaint and resolving alleged discrimination;

request that a hearing be held, if one is desired;

request that relief be granted from the discriminatory action, policy, or practice; and

signature of complainant.

The complaint is usually considered filed when it has been delivered to the proper official or office. The enforcement agency or department may have specific complaint forms or other special requirements, such as notarization of the complaint, but it should notify the complainant of this upon request or upon receipt of a complaint. If the complainant requests it, her or his name will usually be kept confidential. It is sometimes unnecessary for the complaint to be in writing or for the complainant to identify himself or herself. For protection, the complainant should keep a copy of any written complaint and a written, dated record of any oral complaint.

The complainant need not be able to prove the discrimination, but may make a complaint where he or she merely believes that discrimination exists. The enforcement agency or department is responsible for ascertaining whether discrimination has occurred and will provide investigators and or hearing examiners for this purpose.

No person may intimidate, threaten, coerce, or discriminate against any individual because she or he has made a complaint or in any way participated in an investigation or hearing. If such retaliatory action does occur, this, in itself, may be the basis for a complaint of discriminatory harassment.

Compliance Review--Depending on the statute, the agency, and the agency regulations involved, compliance reviews may be conducted with or without a complaint. Reviews may be limited to a particular complaint or may encompass a specific organization or an entire industry. Compliance reviews investigate whether a particular party, employer, or industry is operating in compliance with the nondiscrimination requirements of the applicable statutes and regulations. Reviews may cover the circumstances and facts of specific allegations of discrimination, policies and practices which may result in discrimination, and the

adequacy of affirmative action plans and complaint procedures.

Conciliation--Conciliation is the process of seeking to resolve a discrimination complaint, usually through informal negotiations, without resorting to a formal hearing or legal action.

Discrimination--Discrimination is the effect of an action, policy, or practice which selects a class of persons to receive unequal treatment. Discrimination may involve a single act or may be a continuing policy or practice. Discrimination may be intentional or unintentional; purpose or intent is irrelevant when the effect of a particular action, policy, or practice is to deny equal opportunity. Similarly, discrimination may be overt (that is, using sex or race to discriminate openly) or covert (that is, when a mechanism indirectly related to sex or race is used to discriminate).

Equal Employment Opportunity--Equal employment opportunity provides equal access to all available jobs and training, under equal terms and conditions, and with equal benefits and services in the absence of actions, policies, and practices which differentiate among applicants and employees on the basis of race, color, national origin, sex, age, and religion. This includes equality in recruitment,

hiring, layoff, discharge, recall, promotion, training, responsibility, wages, sick leave, vacation, overtime, insurance, retirement and pension benefits, and breaks.

Executive Order--Executive orders are issued by the President and are binding on the executive branch of the Federal Government.

Guidelines--Guidelines are interpretations of regulations.

Jurisdiction--Jurisdiction refers to the limits or territory within which an authority has the power or right to legislate, interpret the law, or govern.

Legal Action--A legal action is a civil or criminal suit filed in a court. A suit may be filed by a prosecutor, an enforcing agency or department, an aggrieved person(s), or an organization, depending on the type of suit.

Civil suits are filed for the declaration, enforcement, and protection of rights, or for the redress or prevention of a wrong. Specific statutes or sections of the Federal Constitution or State constitutions give particular parties the right to file civil suits. An injunction is a court order forbidding certain actions by certain persons; a request for an injunction is a civil action filed to prevent the initiation or continuation of a wrong. In certain cases in which a complainant wins a civil suit, the court may

order the party complained against to pay the complainant's attorney's fees and court costs.

Criminal actions are filed to seek punishment for infractions of the criminal law. Only the Department of Justice or a State prosecuting agency may prosecute a criminal action.

Prosecuting agencies are authorized by law to choose which statute to sue under, if more than one statute applies. Prosecuting agencies may also take nonjudicial action, including the publication of the names of parties who are found to be in violation of laws prohibiting discrimination, or the debarring of such companies or organizations from receiving any future Federal contracts or financial assistance.

Pattern and Practice Suit--A pattern and practice suit is a civil suit which alleges the existence of a repeated or customary action or practice, or succession of acts of a similar type, which result in a pattern of discrimination.

Reasonable cause--Reasonable cause is sufficient grounds to believe that an illegal act may have occurred.

Regulations--Regulations are the rules or orders promulgated by funding, coordinating, and regulatory agencies; these regulations interpret applicable statutes

and are binding on those persons and organizations which are within the agency's jurisdiction.

Rights--Rights are the powers or privileges of the individual or group which must be respected by others.

The right to a hearing is the right of a complainant, or the party complained against, to have an administrative hearing, upon request, before a hearing examiner or hearing board. Although many discrimination complaint procedures do not afford the complainant the right to a hearing, the enforcing agency or department may hold a hearing for the party complained against and may permit the complainant to participate in it.

The right to file suit is the right of a complainant to file a civil action to enforce a right which allegedly has been violated. Although many statutes prohibiting discrimination do not afford the complainant the right to file suit, the enforcing agency or department, of the Department of Justice, may file suit and permit the complainant to participate in it. In addition, the complainant may be granted the right to file suit by the enforcing agency.

Statute--A statute is a law, enacted by a legislature, which declares, commands, or prohibits certain actions. A Federal statute applies to the entire country; a State or

local statute applies only to that State or local jurisdiction.

APPENDIX I

SEX DISCRIMINATION GUIDELINES OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

Sec.

1604.1 General principles.
1604.2 Sex as a bona fide occupational qualification.
1604.3 Separate lines of progression and seniority systems.
1604.4 Discrimination against married women.
1604.5 Job opportunities advertising.
1604.6 Employment agencies.
1604.7 Pre-employment inquiries as to sex.
1604.8 Relationship of Title VII to the Equal Pay Act.
1604.9 Fringe benefits.
1604.10 Employment policies relating to pregnancy and childbirth.

AUTHORITY: The provisions of this Part 1604 issued under sec. 713(b), 78 Stat. 265, 42 U.S.C. sec. 2000e-12.

SOURCE: 37 FR 6836, April 5, 1972, unless otherwise noted.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this Part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on sterotyped characterizations of the sexes. Such steretoypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by title VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A Seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the

Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703 (e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male ----------, Female ----------"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

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APPENDIX II

REVISED ORDER NO. 4: AFFIRMATIVE ACTION PROGRAM GUIDELINES OF THE OFFICE OF FEDERAL CONTRACT COMPLIANCE

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

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Subpart A—General

§ 60–2.1 Title, purpose and scope.

This part shall also be known as "Revised Order No. 4." and shall cover nonconstruction contractors. Section 60–1.40 of this Chapter, Affirmative Action Compliance Programs, requires that within 120 days from the commencement of a contract each prime contractor or subcontractor with 50 or more employees and a contract of $50,000 or more develop a written affirmative action compliance program for each of its establishments, and such contractors are now further required to revise existing written affirmative action programs to include the changes embodied in this order within 120 days of its publication in the FEDERAL REGISTER. A review of agency compliance surveys indicates that many contractors do not have affirmative action programs on file at the time an establishment is visited by a compliance investigator. This part details the agency review procedure and the results of a contractor's failure to develop and maintain an affirmative action program and then set forth detailed guidelines to be used by contractors and Government agencies in developing and judging these programs as well as the good faith effort required to transform the programs from paper commitments to equal employment opportunity. Subparts B and C are concerned with affirmative action plans only.

Relief for members of an affected class who, by virtue of past discrimination, continue to suffer the present effects of that discrimination shall be provided in the conciliation agreement entered into pursuant to § 60–60.6 of this title. An "affected class" problem must be remedied in order for a contractor to be considered in compliance. Section 60–2.2 herein pertaining to an acceptable affirmative action program is also applicable to the failure to remedy discrimination against members of an "affected class."

[36 FR 23152, Dec. 4, 1971, as amended at 39 FR 5630, Feb. 14, 1974]

§ 60–2.2 Agency action.

(a) (1) Any contractor required by § 60–1.40 of this chapter to develop an affirmative action program at each of his establishments who has not complied fully with that section is not in compliance with Executive Order 11246, as amended (30 FR 12319). Until such programs are developed and found to be acceptable in accordance with the standards and guidelines set forth in §§ 60–2.10 through 60–2.32, the contractor is unable to comply with the employment opportunity clause. An affirmative action plan shall be deemed to have been accepted by the Government at the time appropriate compliance agency has accepted such plan unless within 45 days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(2) The appropriate compliance agency shall notify the contractor and the Office of Federal Contract Compliance when it has accepted an affirmative action plan.

(b) If, in determining such contractor's responsibility for an award of a contract it comes to the contracting officer's attention, through sources within his agency or through the Office of Federal Contract Compliance or other Government agencies, that the contractor has not developed an acceptable affirmative action program at each of his establishments or has substantially deviated from such an approved affirmative action program, the contracting officer shall notify the Director and declare the contractor-bidder nonresponsible unless he can otherwise affirmatively determine that the contractor is able to comply with his equal employment obligations or, unless upon review, it is determined by the Director that substantial issues of law or fact exist as to the contractor's responsibility to the extent that a hearing is, in his sole judgment, required prior to a determination that the contractor is nonresponsible: *Provided*, That during any preaward conferences every effort shall be made through the processes of conciliation, mediation and persuasion to develop an acceptable affirmative action program meeting the standards and guidelines set forth in §§ 60–2.10 through 60–2.32 so that, in the performance of his contract, the contractor is able to meet his equal employment obligations in accordance with the equal opportunity clause and applicable rules, regulations, and orders: *Provided further*, That when the contractor-bidder is declared nonresponsible more than once for inability to comply with the equal employment opportunity clause a notice setting a timely hearing date shall be issued concurrently with the second nonresponsibility determination in accordance with the provisions of § 60–1.26 proposing to declare such contractor-bidder ineligible for future contracts and subcontracts.

(c) Immediately upon finding that a contractor has no affirmative action program or has deviated substantially from an approved affirmative action program or that his program is not acceptable, the contracting officer, the compliance agency representative or the representative of the Office of Federal Contract Compliance, whichever has made such a finding, shall notify officials of the appropriate compliance agency and the Office of Federal Contract Compliance of such fact. The compliance agency shall issue a notice to the contractor giving him 30 days to show cause why enforcement proceedings under section 209(b) of Executive Order 11246, as amended, should not be instituted.

(1) If the contractor fails to show good cause for his failure or fails to remedy that failure by developing and implementing an acceptable affirmative action program within 30 days, the compliance agency, upon the approval of the Director, shall immediately issue a notice of proposed cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts pursuant to § 60–1.26 (b) of this chapter, giving the contractor 14 days to request a hearing. If a request for hearing has not been received within 14 days from such notice, such contractor will be declared ineligible for future contracts and current contracts will be terminated for default.

(2) During the "show cause" period of 30 days every effort shall be made by the compliance agency through conciliation, mediation, and persuasion to resolve the deficiencies which led to the determination of nonresponsibility. If satisfactory adjustments designed to bring the contractor into compliance are not concluded, the compliance agency, with the prior approval of the Director, shall promptly commence formal proceedings leading to the cancellation or termination of existing contracts or subcontracts and debarment from future contracts and subcontracts under § 60–1.26(b) of this chapter.

(d) During the "show cause" period and formal proceedings, each contracting agency must continue to determine the contractor's responsibility in considering whether or not to award a new or additional contract.

[38 FR 2970, Jan. 31, 1973]

Subpart B—Required Contents of Affirmative Action Programs

§ 60–2.10 Purpose of affirmative action program.

An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies and, thus to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

[36 FR 23152, Dec. 4, 1971, as amended at 39 FR 5630, Feb. 14, 1974]

§ 60–2.11 Required utilization analysis.

Based upon the Government's experience with compliance reviews under the Executive order programs and the contractor reporting system, minority groups are most likely to be underutilized in departments and jobs within departments that fall within the following Employer's Information Report (EEO–1) designations: officials and managers, professionals, technicians, sales workers, office and clerical and craftsmen (skilled). As categorized by the EEO–1 designations, women are likely to be underutilized in departments and jobs within departments as follows: officials and managers, professionals, technicians, sales workers (except over-the-counter sales in certain retail establishments), craftsmen (skilled and semi-skilled). Therefore, the contractor shall direct special attention to such jobs in his analysis and goal setting for minorities and women. Affirmative action programs must contain the following information:

(a) Workforce analysis which is defined as a listing of each job classification as appears in applicable collective bargaining agreements or payroll records (not job group) ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision. If there are separate work units or lines of progression within a department a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. For each job classification, the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Spanish-surnamed Americans, American Indians, and Orientals. The wage rate or salary range for each job classification should be given. All job classifications, including all managerial job classifications, must be listed.

(b) An analysis of all major job classifications at the facility, with explanation if minorities or women are currently being underutilized in any one or more job classifications (job "classification" herein meaning one or a group of jobs having similar content, wage rates and opportunities). "Underutilization" is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. In making the work force analysis, the contractor shall conduct such analysis separately for minorities and women.

(1) In determining whether minorities are being underutilized in any job classification the contractor will consider at least all of the following factors:

(i) The minority population of the labor area surrounding the facility;

(ii) The size of the minority unemployment force in the labor area surrounding the facility;

(iii) The percentage of the minority work force as compared with the total work force in the immediate labor area;

(iv) The general availability of minorities having requisite skills in the immediate labor area;

(v) The availability of minorities having requisite skills in an area in which the contractor can reasonably recruit;

(vi) The availability of promotable and transferable minorities within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to minorities.

(2) In determining whether women are being underutilized in any job classification, the contractor will consider at least all of the following factors:

(i) The size of the female unemployment force in the labor area surrounding the facility;

(ii) The percentage of the female workforce as compared with the total workforce in the immediate labor area;

(iii) The general availability of women having requisite skills in the immediate labor area;

(iv) The availability of women having requisite skills in an area in which the contractor can reasonably recruit;

(v) The availability of women seeking employment in the labor or recruitment area of the contractor;

(vi) The availability of promotable and transferable female employees within the contractor's organization;

(vii) The existence of training institutions capable of training persons in the requisite skills; and

(viii) The degree of training which the contractor is reasonably able to undertake as a means of making all job classes available to women.

[36 FR 23152, Dec. 4, 1971, as amended at 39 FR 5630, Feb. 14, 1974]

§ 60–2.12 Establishment of goals and timetables.

(a) The goals and timetables developed by the contractor should be attainable in terms of the contractor's analysis of his deficiencies and his entire affirmative action program. Thus, in establishing the size of his goals and the length of his timetables, the contractor should consider the results which could reasonably be expected from his putting forth every good faith effort to make his overall affirmative action program work. In determining levels of goals, the contractor should consider at least the factors listed in § 60–2.11.

(b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal setting process.

(c) Goals should be significant, measurable and attainable.

(d) Goals should be specific for planned results, with timetables for completion.

(e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction and turnover of and in the work force.

(g) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where deficiencies exist and where numbers or percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of the contractor.

(j) Where the contractor has not established a goal, his written affirmative action program must specifically analyze each of the factors listed in 60–2.11 and must detail his reason for a lack of a goal.

(k) In the event it comes to the attention of the compliance agency or the Office of Federal Contract Compliance that there is a substantial disparity in the utilization of a particular minority group or men or women of a particular minority group, the compliance agency or OFCC may require separate goals and timetables for such minority group and may further require, where appropriate, such goals and timetables by sex for such group for such job classifications and organizational units specified by the compliance agency or OFCC.

(l) Support data for the required analysis and program shall be compiled and maintained as part of the contractor's affirmative action program. This data

will include but not be limited to progression line charts, seniority rosters, applicant flow data, and applicant rejection ratios indicating minority and sex status.

(m) Copies of affirmative action programs and/or copies of support data shall be made available to the compliance agency or the Office of Federal Contract Compliance, at the request of either, for such purposes as may be appropriate to the fulfillment of their responsibilities under Executive Order 11246, as amended.

§ 60–2.13 Additional required ingredients of affirmative action programs.

Effective affirmative action programs shall contain, but not necessarily be limited to, the following ingredients:

(a) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.

(b) Formal internal and external dissemination of the contractor's policy.

(c) Establishment of responsibilities for implementation of the contractor's affirmative action program.

(d) Identification of problem areas (deficiencies) by organizational units and job classification.

(e) Establishment of goals and objectives by organizational units and job classification, including timetables for completion.

(f) Development and execution of action oriented programs designed to eliminate problems and further designed to attain established goals and objectives.

(g) Design and implementation of internal audit and reporting systems to measure effectiveness of the total program.

(h) Compliance or personnel policies and practices with the Sex Discrimination Guidelines (41 CFR Part 60–20).

(i) Active support of local and national community action programs and community service programs, designed to improve the employment opportunities of minorities and women.

(j) Consideration of minorities and women not currently in the workforce having requisite skills who can be recruited through affirmative action measures.

§ 60–2.14 Compliance status.

No contractor's compliance status shall be judged alone by whether or not he reaches his goals and meets his timetables. Rather, each contractor's compliance posture shall be reviewed and determined by reviewing the contents of his program, the extent of his adherence to this program, and his good faith efforts to make his program work toward the realization of the program's goals within the timetables set for completion. There follows an outline of examples of procedures that contractors and Federal agencies should use as a guideline for establishing, implementing, and judging an acceptable affirmative action program.

Subpart C—Methods of Implementing the Requirements of Subpart B

§ 60–2.20 Development or reaffirmation of the equal employment opportunity policy.

(a) The contractor's policy statement should indicate the chief executive officers' attitude on the subject matter, assign overall responsibility and provide for a reporting and monitoring procedure. Specific items to be mentioned should include, but not limited to:

(1) Recruit, hire, train, and promote persons in all job classifications, without regard to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. (The term "bona fide occupational qualification" has been construed very narrowly under the Civil Rights Act of 1964 Under Executive Order 11246 as amended and this part, this term will be construed in the same manner.)

(2) Base decisions on employment so as to further the principle of equal employment opportunity.

(3) Insure that promotion decisions are in accord with principles of equal employment opportunity by imposing only valid requirements for promotional opportunities.

(4) Insure that all personnel actions such as compensation, benefits, transfers, layoffs, return from layoff, company sponsored training, education, tuition assistance, social and recreation programs, will be administered without regard to race, color, religion, sex, or national origin.

§ 60–2.21 Dissemination of the policy.

(a) The contractor should disseminate his policy internally as follows:

(1) Include it in contractor's policy manual.

(2) Publicize it in company newspaper, magazine, annual report and other media.

(3) Conduct special meetings with executive, management, and supervisory personnel to explain intent of policy and individual responsibility for effective implementation, making clear the chief executive officer's attitude.

(4) Schedule special meetings with all other employees to discuss policy and explain individual employee responsibilities.

(5) Discuss the policy thoroughly in both employee orientation and management training programs.

(6) Meet with union officials to inform them of policy, and request their cooperation.

(7) Include nondiscrimination clauses in all union agreements, and review all contractual provisions to ensure they are nondiscriminatory.

(8) Publish articles covering EEO programs, progress reports, promotions, etc., of minority and female employees, in company publications.

(9) Post the policy on company bulletin boards.

(10) When employees are featured in product or consumer advertising, employee handbooks or similar publications both minority and nonminority, men and women should be pictured.

(11) Communicate to employees the existence of the contractors affirmative action program and make available such elements of his program as will enable such employees to know of and avail themselves of its benefits.

(b) The contractor should disseminate his policy externally as follows:

(1) Inform all recruiting sources verbally and in writing of company policy, stipulating that these sources actively recruit and refer minorities and women for all positions listed.

(2) Incorporate the Equal Opportunity clause in all purchase orders, leases, contracts, etc., covered by Executive Order 11246, as amended, and its implementing regulations.

(3) Notify minority and women's organizations, community agencies, community leaders, secondary schools and colleges, of company policy, preferably in writing.

(4) Communicate to prospective employees the existence of the contractor's affirmative action program and make available such elements of his program as will enable such prospective employees to know of and avail themselves of its benefits.

(5) When employees are pictured in consumer or help wanted advertising, both minorities and nonminority men and women should be shown.

(6) Send written notification of company policy to all subcontractors, vendors and suppliers requesting appropriate action on their part.

§ 60–2.22 Responsibility for implementation.

(a) An executive of the contractor should be appointed as director or manager of company Equal Opportunity Programs. Depending upon the size and geographical alignment of the company, this may be his or her sole responsibility. He or she should be given the necessary top management support and staffing to execute the assignment. His or her identity should appear on all internal and external communications on the company's Equal Opportunity Programs. His or her responsibilities should include, but not necessarily be limited to:

(1) Developing policy statements, affirmative action programs, internal and external communication techniques.

(2) Assisting in the identification of problem areas.

(3) Assisting line management in arriving at solutions to problems.

(4) Designing and implementing audit and reporting systems that will:

(i) Measure effectiveness of the contractor's programs.

(ii) Indicate need for remedial action.

(iii) Determine the degree to which the contractor's goals and objectives have been attained.

(5) Serve as liaison between the contractor and enforcement agencies.

(6) Serve as liaison between the contractor and minority organizations, women's organizations and community action groups concerned with employment opportunities of minorities and women.

(7) Keep management informed of latest developments in the entire equal opportunity area.

(b) Line responsibilities should include, but not be limited to, the following:

(1) Assistance in the identification of problem areas and establishment of local and unit goals and objectives.

(2) Active involvement with local minority organizations, women's organizations, community action groups and community service programs.

(3) Periodic audit of training pro-

grams, hiring and promotion patterns to remove impediments to the attainment of goals and objectives.

(4) Regular discussions with local managers, supervisors and employees to be certain the contractor's policies are being followed.

(5) Review of the qualifications of all employees to insure that minorities and women are given full opportunities for transfers and promotions.

(6) Career counseling for all employees.

(7) Periodic audit to insure that each location is in compliance in area such as:

(i) Posters are properly displayed.

(ii) All facilities, including company housing, which the contractor maintains for the use and benefit of his employees, are in fact desegregated, both in policy and use. If the contractor provides facilities such as dormitories, locker rooms and rest rooms, they must be comparable for both sexes.

(iii) Minority and female employees are afforded a full opportunity and are encouraged to participate in all company sponsored educational, training, recreational and social activities.

(8) Supervisors should be made to understand that their work performance is being evaluated on the basis of their equal employment opportunity efforts and results, as well as other criteria.

(9) It shall be a responsibility of supervisors to take actions to prevent harassment of employees placed through affirmative action efforts.

§ 60–2.23 Identification of problem areas by organizational units and job classifications.

(a) An in-depth analysis of the following should be made, paying particular attention to trainees and those categories listed in § 60–2.11(d).

(1) Composition of the work force by minority group status and sex.

(2) Composition of applicant flow by minority group status and sex.

(3) The total selection process including position descriptions, position titles, worker specifications, application forms, interview procedures, test administration, test validity, referral procedures, final selection process, and similar factors.

(4) Transfer and promotion practices.

(5) Facilities, company sponsored recreation and social events, and special programs such as educational assistance.

(6) Seniority practices and seniority provisions of union contracts.

(7) Apprenticeship programs.

(8) All company training programs, formal and informal.

(9) Work force attitude.

(10) Technical phases of compliance, such as poster and notification to labor unions, retention of applications, notification to subcontractors, etc.

(b) If any of the following items are found in the analysis, special corrective action should be appropriate.

(1) An "underutilization" of minorities or women in specific work classifications.

(2) Lateral and/or vertical movement of minority or female employees occurring at a lesser rate (compared to work force mix) than that of nonminority or male employees.

(3) The selection process eliminates a significantly higher percentage of minorities or women than nonminorities or men.

(4) Application and related preemployment forms not in compliance with Federal legislation.

(5) Position descriptions inaccurate in relation to actual functions and duties.

(6) Tests and other selection techniques not validated as required by the OFCC Order on Employee Testing and other Selection Procedures.

(7) Test forms not validated by location, work performance and inclusion of minorities and women in sample.

(8) Referral ratio of minorities or women to the hiring supervisor or manager indicates a significantly higher percentage are being rejected as compared to nonminority and male applicants.

(9) Minorities or women are excluded from or are not participating in company sponsored activities or programs.

(10) De facto segregation still exists at some facilities.

(11) Seniority provisions contribute to overt or inadvertent discrimination, i.e., a disparity by minority group status or sex exists between length of service and types of job held.

(12) Nonsupport of company policy by managers, supervisors or employees.

(13) Minorities or women underutilized or significantly underrepresented in training or career improvement programs.

(14) No formal techniques established for evaluating effectiveness of EEO programs.

(15) Lack of access to suitable housing inhibits recruitment efforts and employment of qualified minorities.

(16) Lack of suitable transportation (public or private) to the work place inhibits minority employment.

(17) Labor unions and subcontractors not notified of their responsibilities.

(18) Purchase orders do not contain EEO clause.

(19) Posters not on display.

§ 60–2.24 Development and execution of programs.

(a) The contractor should conduct detailed analyses of position descriptions to insure that they accurately reflect position functions, and are consistent for the same position from one location to another.

(b) The contractor should validate worker specifications by division, department, location or other organizational unit and by job category using job performance criteria. Special attention should be given to academic, experience and skill requirements to insure that the requirements in themselves do not constitute inadvertent discrimination. Specifications should be consistent for the same job classification in all locations **and should be free from bias as regards to race, color, religion, sex, or national origin, except where sex is a bona fide occupational qualification. Where requirements screen out a disproportionate number of minorities or women such requirements should be professionally validated to job performance.**

(c) Approved position descriptions **and worker specifications, when used by the contractor, should be made available to all members of management involved in the recruiting, screening, selection, and promotion process. Copies should also be distributed to all recruiting sources.**

(d) The contractor should evaluate the total selection process to insure freedom from bias and, thus, aid the attainment of goals and objectives.

(1) All personnel involved in the recruiting, screening, selection, promotion, disciplinary, and related processes should be carefully selected and trained to insure elimination of bias in all personnel actions.

(2) The contractor shall observe the requirements of the OFCC Order pertaining to the validation of employee tests and other selection procedures.

(3) Selection techniques other than tests may also be improperly used so as to have the effect of discriminating against minority groups and women. Such techniques include but are not restricted to, unscored interviews, unscored or casual application forms, arrest records, credit checks, considerations of marital status or dependency or minor children. Where there exist data suggesting that such unfair discrimination or exclusion of minorities or women exists, the contractor should analyze his unscored procedures and eliminate them if they are not objectively valid.

(e) Suggested techniques to improve recruitment and increase the flow of minority or female applicants follow:

(1) Certain organizations such as the Urban League, Job Corps, Equal Opportunity Programs, Inc., Concentrated Employment Programs, Neighborhood Youth Corps, Secondary Schools, Colleges, and City Colleges with high minority enrollment, the State Employment Service, specialized employment agencies, Aspira, LULAC, SER, the G.I. Forum, the Commonwealth of Puerto Rico are normally prepared to refer minority applicants. Organizations prepared to refer women with specific skills are: National Organization for Women, Welfare Rights Organizations, Women's Equity Action League, Talent Bank from Business and Professional Women (including 26 women's organizations), Professional Women's Caucus, Intercollegiate Association of University Women, Negro Women's sororities and service groups such as Delta Sigma Theta, Alpha Kappa Alpha, and Zeta Phi Beta; National Council of Negro Women, American Association of University Women, YWCA, and sectarian groups such as Jewish Women's Groups, Catholic Women's Groups and Protestant Women's Groups, and women's colleges. In addition, community leaders as individuals shall be added to recruiting sources.

(2) Formal briefing sessions should be held, preferably on company premises, with representatives from these recruiting sources. Plant tours, presentations by minority and female employees, clear and concise explanations of current and future job openings, position descriptions, worker specifications, explanations of the company's selection process, and recruiting literature should be an integral part of the briefings. Formal ar-

rangements should be made for referral of applicants, followup with sources, and feedback on disposition of applicants.

(3) Minority and female employees, using procedures similar to subparagraph (2) of this paragraph, should be actively encouraged to refer applicants.

(4) A special effort should be made to include minorities and women on the Personnel Relations staff.

(5) Minority and female employees should be made available for participation in Career Days, Youth Motivation Programs, and related activities in their communities.

(6) Active participation in "Job Fairs" is desirable. Company representatives so participating should be given authority to make on-the-spot commitments.

(7) Active recruiting programs should be carried out at secondary schools, junior colleges, and colleges with predominant minority or female enrollments.

(8) Recruiting efforts at all schools should incorporate special efforts to reach minorities and women.

(9) Special employment programs should be undertaken whenever possible. Some possible programs are:

(i) Technical and nontechnical co-op programs with predominately Negro and women's colleges.

(ii) "After school" and/or work-study jobs for minority youths, male and females.

(iii) Summer jobs for underprivileged youth, male and female.

(iv) Summer work-study programs for male and female faculty members of the predominantly minority schools and colleges.

(v) Motivation, training and employment programs for the hard-core unemployed, male and female.

(10) When recruiting brochures pictorially present work situations, the minority and female members of the work force should be included, especially when such brochures are used in school and career programs.

(11) Help wanted advertising should be expanded to include the minority news media and women's interest media on a regular basis.

(f) The contractor should insure that minority and female employees are given equal opportunity for promotion. Suggestions for achieving this result include:

(1) Post or otherwise announce promotional opportunities.

(2) Make an inventory of current minority and female employees to determine academic, skill and experience level of individual employees.

(3) Initiate necessary remedial, job training and workstudy programs.

(4) Develop and implement formal employee evaluation programs.

(5) Make certain "worker specifications" have been validated on job performance related criteria. (Neither minority nor female employees should be required to possess higher qualifications than those of the lowest qualified incumbent.)

(6) When apparently qualified minority or female employees are passed over for upgrading, require supervisory personnel to submit written justification.

(7) Establish formal career counseling programs to include attitude development, education aid, job rotation, buddy system and similar programs.

(8) Review seniority practices and seniority clauses in union contracts to insure such practices or clauses are nondiscriminatory and do not have a discriminatory effect.

(g) Make certain facilities and company-sponsored social and recreation activities are desegregated. Actively encourage all employees to participate.

(h) Encourage child care, housing and transportation programs appropriately designed to improve the employment opportunities for minorities and women.

§ 60–2.25 Internal audit and reporting systems.

(a) The contractor should monitor records of referrals, placements, transfers, promotions and terminations at all levels to insure nondiscriminatory policy is carried out.

(b) The contractor should require formal reports from unit managers on a schedule basis as to degree to which corporate or unit goals are attained and timetables met.

(c) The contractor should review report results with all levels of management.

(d) The contractor should advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

§ 60–2.26 Support of action programs.

(a) The contractor should appoint key members of management to serve on Merit Employment Councils, Community Relations Boards and similar organizations.

(b) The contractor should encourage minority and female employees to participate actively in National Alliance of Businessmen programs for youth motivation.

(c) The contractor should support Vocational Guidance Institutes, Vestibule Training Programs and similar activities.

(d) The contractor should assist secondary schools and colleges in programs designed to enable minority and female graduates of these institutions to compete in the open employment market on a more equitable basis.

(e) The contractor should publicize achievements of minority and female employees in local and minority news media.

(f) The contractor should support programs developed by such organizations as National Alliance of Businessmen, the Urban Coalition and other organizations concerned with employment opportunities for minorities or women.

Subpart D—Miscellaneous

§ 60–2.30 Use of goals.

The purpose of a contractor's establishment and use of goals is to insure that he meet his affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

§ 60–2.31 Preemption.

To the extent that any State or local laws, regulations or ordinances including those which grant special benefits to persons on account of sex, are in conflict with Executive Order 11246, as amended, or with the requirements of this part, we will regard them as preempted under the Executive order.

§ 60–2.32 Supersedure.

All orders, instructions, regulations, and memoranda of the Secretary of Labor, other officials of the Department of Labor and contracting agencies are hereby superseded to the extent that they are inconsistent herewith, including a previous "Order No. 4" from this Office dated January 30, 1970. Nothing in this part is intended to amend 41 CFR 60–3 published in the FEDERAL REGISTER on October 2, 1971 or Employee Testing and Other Selection Procedures or 41 CFR 60–20 on Sex Discrimination Guidelines.

APPENDIX III

SEX DISCRIMINATION GUIDELINES OF THE

OFFICE OF FEDERAL CONTRACT COMPLIANCE

PART 60–20—SEX DISCRIMINATION GUIDELINES

Sec.
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60–20.5 Discriminatory wages.
60–20.6 Affirmative action.

AUTHORITY: The provisions of this Part 60–20 issued under sec. 201, E.O. 11246, 30 F.R. 12319, and E.O. 11375, 32 F.R. 14303.

SOURCE: The provisions of this Part 60–20 appear at 35 F.R. 8888, June 9, 1970, unless otherwise noted.

§ 60–20.1 Title and purpose.

The purpose of the provisions in this part is to set forth the interpretations and guidelines of the Office of Federal Contract Compliance regarding the implementation of Executive Order 11375 for the promotion and insuring of equal opportunities for all persons employed or seeking employment with Government contractors and subcontractors or with contractors and subcontractors performing under federally assisted construction contracts, without regard to sex. Experience has indicated that special problems related to the implementation of Executive Order 11375 require a definitive treatment beyond the terms of the order itself. These interpretations are to be read in connection with existing regulations, set forth in Part 60–1 of this chapter.

§ 60–20.2 Recruitment and advertisement.

(a) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

(b) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "Male" or "Female" will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 60–20.3 Job policies and practices.

(a) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

(b) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification.

NOTE: In most Government contract work there are only limited instances where valid reasons can be expected to exist which would justify the exclusion of all men or all women from any given job.

(c) The employer must not make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

(d) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

(e) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or women a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

(f) (1) An employer must not deny a female employee the right to any job that she is qualified to perform in reliance upon a State "protective" law. For example, such laws include those which prohibit women from performing in certain types of occupations (e.g., a bartender or a core-maker); from working at jobs requiring more than a certain number of hours; and from working at jobs that require lifting or carrying more than designated weights.

(2) Such legislation was intended to be beneficial, but, instead, has been found to result in restricting employment opportunities for men and/or women. Accordingly, it cannot be used as a basis for denying employment or for establishing sex as a bona fide occupational qualification for the job.

(g) (1) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female employee meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. The conditions applicable to her leave (other than the length thereof) and to her return to employment, shall be in accordance with the employer's leave policy.

(2) If the employer has no leave policy, childbearing must be considered by the employer to be a justification for a leave of absence for a female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits.

(h) The employer must not specify any differences for male and female employees on the basis of sex in either mandatory or optional retirement age.

(i) Nothing in these guidelines shall be interpreted to mean that differences in capabilities for job assignments do not exist among individuals and that such distinctions may not be recognized by the employer in making specific assignments. The purpose of these guidelines is to insure that such distinctions are not based upon sex.

§ 60–20.4 Seniority system.

Where they exist, seniority lines and lists must not be based solely upon sex. Where such a separation has existed, the employer must eliminate this distinction.

§ 60–20.5 Discriminatory wages.

(a) The employer's wages schedules must not be related to or based on the sex of the employees.

NOTE. The more obvious cases of discrimination exist where employees of different sexes are paid different wages on jobs which require substantially equal skill, effort and responsibility and are performed under similar working conditions.

(b) The employer may not discriminatorily restrict one sex to certain job classifications. In such a situation, the employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex. (Example: An electrical manufacturing company may have a production division with three functional units: One (assembly) all female; another (wiring), all male; and a third (circuit boards), also all male. The highest wage attainable in the assembly unit is considerably less than that in the circuit board and wiring units. In such a case the employer must take steps to provide qualified female employees opportunity for placement in job openings in the other two units.)

(c) To avoid overlapping and conflicting administration the Director will consult with the Administrator of the Wage

and Hour Administration before issuing an opinion on any matter covered by both the Equal Pay Act and Executive Order 11246, as amended by Executive Order 11375.

§ 60–20.6 Affirmative action.

(a) The employer shall take affirmative action to recruit women to apply for those jobs where they have been previously excluded.

NOTE. This can be done by various methods. Examples include: (1) including in itineraries of recruiting trips women's colleges where graduates with skills desired by the employer can be found, and female students of coeducational institutions and (2) designing advertisements to indicate that women will be considered equally with men for jobs.

(b) Women have not been typically found in significant numbers in management. In many companies management trainee programs are one of the ladders to management positions. Traditionally, few, if any, women have been admitted into these programs. An important element of affirmative action shall be a commitment to include women candidates in such programs.

(c) Distinctions based on sex may not be made in other training programs. Both sexes should have equal access to all training programs and affirmative action programs should require a demonstration by the employer that such access has been provided.

PART 86—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

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SOURCE: 40 FR 24128, June 4, 1975, unless otherwise noted.

Subpart A—Introduction

§ 86.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Pub. L. 93–568, 88 Stat. 1855 (except sections 904 and 906 of those Amendments) which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part. This part is also intended to effectuate section 844 of the Education Amendments of 1974, Pub. L. 93–380, 88 Stat. 484. The effective date of this part shall be July 21, 1975.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682, as amended by Pub. L. 93–568, 88 Stat. 1855, and Sec. 844, Education Amendments of 1974, 88 Stat. 484, Pub. L. 93–380)

§ 86.2 Definitions.

As used in this part, the term—

(a) *"Title IX"* means title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by section 3 of Pub. L. 93–568, 88 Stat. 1855, except sections 904 and 906 thereof; 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *"Department"* means the Department of Health, Education, and Welfare.

(c) *"Secretary"* means the Secretary of Health, Education, and Welfare.

(d) *"Director"* means the Director of the Office for Civil Rights of the Department.

(e) *"Reviewing Authority"* means that component of the Department delegated authority by the Secretary to appoint, and to review the decisions of, administrative law judges in cases arising under this part.

(f) *"Administrative law judge"* means a person appointed by the reviewing authority to preside over a hearing held under this part.

(g) *"Federal financial assistance"* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(h) *"Recipient"* means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(i) *"Applicant"* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(j) *"Educational institution"* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (k), (l), (m), or (n) of this section.

(k) *"Institution of graduate higher education"* means an institution which:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences; or

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

(l) *"Institution of undergraduate higher education"* means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward

a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body which certifies credentials or offers degrees, but which may or may not offer academic study.

(m) *"Institution of professional education"* means an institution (except any institution of undergraduate higher education) which offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the United States Commissioner of Education.

(n) *"Institution of vocational education"* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study.

(o) *"Administratively separate unit"* means a school, department or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

(p) *"Admission"* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

(q) *"Student"* means a person who has gained admission.

(r) *"Transition plan"* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a)(2) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Director finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the Director deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(i) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and non-academic personnel working in connection with the recipient's education program or activity;

(ii) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(iii) Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the Director upon request, a description of any modifications made pursuant to paragraph (c)(ii) of this section and of any remedial steps taken pursuant to paragraph (c)(iii) of this section.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 5, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Director, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the Director if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 86.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Director of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* The Director will specify the form of the assurances required by paragraph (a) of this section and the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.5 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of Subpart B of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.6 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, as amended; sections 799A and 845 of the Public Health Service Act (42 U.S.C. 295h–9 and 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); the Equal Pay Act (29 U.S.C. 206 and 206(d)); and any other Act of Congress or Federal regulation.

(Secs. 901, 902, 905, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1685)

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement which would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association which would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and which receives or benefits from Federal financial assistance.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.7 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.8 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at

least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.9 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities which it operates, and that is required by title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the Director finds necessary to apprise such persons of the protections against discrimination assured them by title IX and this part, but shall state at least that the requirement not to discriminate in education programs and activities extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of title IX and this part to such recipient may be referred to the employee designated pursuant to § 86.8, or to the Director.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in: (i) Local newspapers; (ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and (iii) memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form which it makes available to any person of a type described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and require such representatives to adhere to such policy.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

Subpart B—Coverage

§ 86.11 Application.

Except as provided in this subpart, this Part 86 applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

§ 86.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section, shall do so by submitting in writing to the Director a statement by the highest ranking official of the institution, identifying the provisions of this part which conflict with a specific tenet of the religious organization.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.13 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association, the Young Women's Christian Association, the Girl Scouts, the Boy Scouts and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; Sec. 3(a) of P.L. 93-568, 88 Stat. 1862 amending Sec. 901)

§ 86.15 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 86.16 and 86.17, and Subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of Subpart C.* Except as provided in paragraphs (d) and (e) of this section, Subpart C applies to each recipient. A recipient to which Subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, Subpart C applies only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.16 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which Subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of one sex as regular students as of June 23, 1965, but thereafter admitted as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of Subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in § 86.17, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.17 Transition plans.

(a) *Submission of plans.* An institution to which § 86.16 applies and which is composed of more than one administratively separate unit may submit either

a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes, as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which § 86.16 applies shall result in treatment of applicants to or students of such recipient in violation of Subpart C unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which § 86.16 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs which emphasize the institution's commitment to enrolling students of the sex previously excluded.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.18–86.20 [Reserved]

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 86.21 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which this subpart applies, except as provided in §§ 86.16 and 86.17.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this Subpart applies shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission which has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria which do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice which so discriminates or excludes;

(3) Shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is "Miss" or "Mrs." A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.22 Preference in admission.

A recipient to which this subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which admits as students or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to § 86.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 86.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at educational institutions, schools or entities which admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.24–86.30 [Reserved]

Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

§ 86.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which Subpart C does not apply, or (2) an entity, not a recipient, to which Subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient edu-

cational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution; *Provided*, a recipient educational institution which administers or assists in the administration of such scholarships, fellowship, or other awards which are restricted to members of one sex provides, or otherwise makes available reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient;

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activtiy takes no action affecting any applicant, student, or employee of such recipient which this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.32 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than provided by such recipient.

2) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

(Secs. 901, 902, 907, Education Amendments of 1972, 86 Stat. 373, 374, 375; 20 U.S.C. 1681, 1682, 1686)

§ 86.33 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374)

§ 86.34 Access to course offerings.

A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

(a) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of this regulation. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(b) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(c) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

(d) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.35 Access to schools operated by L.E.A.s.

A recipient which is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

(Sections 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.36 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient which uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials which permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 86.37 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not: (1) On the basis of sex, provide different amount or types of such assistance, limit eligibility for such assistance which is of any particular type or source, apply different criteria, or otherwise discriminate; (2) through solicitation, listing, approval, provision of facilities or other services, assist any foundation, trust, agency, organization, or person which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or (3) apply any rule or assist in application of any rule concerning eligibility for such

assistance which treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) a recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government which requires that awards be made to members of a particular sex specified therein; *Provided*, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in subparagraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under subparagraph (b)(2)(i) of this paragraph; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and § 86.41.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub. L. 93-380, 88 Stat. 484)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which assists any agency, organization or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates Subpart E of this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.39 Health and insurance benefits and services.

In providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner which would violate Subpart E of this part if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.40 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.41 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try-out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose of major activity of which involves bodily contact.

(c) *Equal opportunity.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available the Director will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the Director may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with this section as

expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of this regulation.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682; and Sec. 844, Education Amendments of 1974, Pub L. 93-380, 88 Stat. 484)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.42 Textbooks and curricular material.

Nothing in this regulation shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.43–86.50 [Reserved]

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs and Activities Prohibited

§ 86.51 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient which receives or benefits from Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by this Subpart, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity which admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.53 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have in the past so discriminated, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities which furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of this subpart.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.54 Compensation.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.55 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements which classify persons on the basis of sex, unless sex is a bona-fide occupational qualification for the positions in question as set forth in § 86.61.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

[40 FR 21428, June 4, 1975; 40 FR 39506, Aug. 28, 1975]

§ 86.56 Fringe benefits.

(a) *"Fringe benefits" defined.* For purposes of this part, "fringe benefits" means: Any medical, hospital, accident, life insurance or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 86.54.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan which does not provide either for equal periodic benefits for members of each sex, or for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.57 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom and any temporary disability resulting therefrom as any other temporary dis-

ability for all job related purposes, including commencement, duration and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.59 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a *bona-fide* occupational qualification for the particular job in question.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.60 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss or Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§ 86.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart provided it is shown that sex is a bona-fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section which is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)

§§ 86.62–86.70 [Reserved]

Subpart F—Procedures [Interim]

§ 86.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 45 CFR 80-6—80-11 and 45 CFR Part 81.

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APPENDIX V

EQUAL CREDIT OPPORTUNITY REGULATIONS

Sec.

202.1 Authority and scope.
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AUTHORITY: Sec. 703 of the Equal Opportunity Act (Pub. L. 93-495, 15 U.S.C. 1691 et seq.)

SOURCE: Regulation B, 40 FR 49306, Oct. 22, 1975, unless otherwise noted.

§ 202.1 Authority and scope.

This Part comprises the regulations issued by the Board of Governors of the Federal Reserve System pursuant to the Equal Credit Opportunity Act (Pub. L. 93-495; 88 Stat. 1521 *et seq.*). This Part applies to all persons who regularly extend, offer to extend, arrange for or offer to arrange for the extension of credit for any purpose whatsoever and in any amount.

§ 202.2 General rule.

A creditor shall not discriminate against any applicant on the basis of sex or marital status with respect to any aspect of a credit transaction.

§ 202.3 Definitions and rules of construction.[1]

For purposes of this Part, unless the context indicates otherwise, the following definitions apply:

(a) "Act" means the Equal Credit Opportunity Act (Pub. L. 93-495; 88 Stat. 1521 *et seq.*).

(b) "Account" means an extension of credit; "use of an account" throughout this Part refers only to open end credit.

(c) "Applicant" means any person who applies to a creditor directly for an extension, renewal or continuation of credit, or who applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit. With respect to any creditor the term also includes any person to whom credit is or has been extended by that creditor.

(d) "Application" means an oral or written request by an applicant for an extension of credit which is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an existing credit plan to obtain an amount of credit which does not exceed a previously established credit limit.

(e) "Arrange for the extension of credit" means to provide or offer to provide credit which is or will be extended by another person under a business or other relationship pursuant to which the person arranging such credit participates in the decision to extend credit to an applicant. The term does not include participation in a credit transaction which is limited to honoring a credit card.

(f) "Consumer credit" means credit offered or extended to a natural person in which the money, property or service which is the subject of the transaction is primarily for personal, family or household purposes.

(g) "Contractually liable" means expressly obligated to repay all debts arising on an account by reason of having signed an agreement to that effect.

(h) "Credit" means the right granted by a creditor to an applicant to defer payment of a debt, or to incur debt and defer its payment or to purchase property or services and defer payment therefor.

[1] Note that for some purposes some of the definitions are not identical with those found in 12 CFR 226 (Regulation Z).

(i) "Credit card" means any card, plate, coupon book or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property or services on credit.

(j) "Creditor" means any person who regularly extends, renews or continues credit or arranges for the extension, renewal or continuation of credit. The term includes assignees, transferees or subrogees of an original creditor if they participate in the decision to extend credit, but does not include a person whose only participation in a credit transaction is to honor a credit card.

(k) "Credit transaction" means every aspect of an applicant's dealings with a creditor including, but not limited to, solicitation of prospective applicants by advertising or other means; information requirements; investigatory procedures; standards of creditworthiness; terms of credit; furnishing of credit information and collection procedures.

(l) "Discriminate against an applicant on the basis of sex or marital status" means to treat an applicant less favorably than other applicants on the basis of sex or marital status.

(m) "Extension of credit" means the granting of credit in any form and includes, but is not limited to, credit granted in addition to any existing credit or credit limit; credit granted in the form of a credit card, whether or not the card has been used; the refinancing of any credit; the consolidation of two or more obligations; the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the continuing in force of a previously issued credit card; or the continuance of existing credit without any special effort to collect at or after maturity.

(n) "Marital status" means the state of being unmarried, married or separated, as defined by applicable State law. For purposes of this Part, the term "unmarried" includes a person who is divorced or widowed.

(o) "Open end credit" means credit extended pursuant to a plan under which the creditor may permit the applicant to make purchases or obtain loans, from time to time, directly from the creditor or indirectly by use of a credit card, check or other device, as the plan may provide. The term does not include negotiated advances under an open end real estate mortgage or a letter of credit.

(p) "Person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(q) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico or any territory or possession of the United States.

§ 202.4 Applications.

(a) *Discouraging applications.* A creditor shall not make any statements to applicants or prospective applicants which would, on the basis of sex or marital status, discourage a reasonable person from applying for credit or pursuing an application for credit.

(b) *Separate accounts.* A creditor shall not refuse, on the basis of sex or marital status, to grant a separate account to a creditworthy applicant.

(c) *Inquiries as to marital status.* (1) A creditor shall not ask the applicant's marital status if the applicant applies for an unsecured separate account, except in a community property State or as required to comply with State law governing permissible finance charges or loan ceilings.

(2) If the creditor asks the applicant's marital status, only the terms "married," "unmarried" or "separated" shall be used.

(3) Notwithstanding any other provision of this subsection, a creditor may inquire as to the liability to pay alimony, child support or maintenance. Further, if a creditor first discloses to an applicant that income from alimony, child support or maintenance payments need not be revealed if the applicant does not choose to disclose such income in applying for credit, a creditor may inquire whether any income stated in an application is derived from such a source.

(4) Where an applicant is requested to designate a title (such as Mr., Mrs., Ms. or Miss), the creditor shall state conspicuously that the designation of such title is optional. An application form shall otherwise use only terms that are neutral as to sex unless other terms are required by an enforcement agency to monitor compliance with this Part.

(d) *Equal Credit Opportunity Act no-*

tice. (1) Except where application is made by telephone, or orally for an amount of credit to exceed an existing limit on an applicant's open end account, the creditor shall provide each applicant with the following notice in writing:

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of sex or marital status. The Federal agency which administers compliance with this law concerning this (insert appropriate description—bank, store, etc.) is (name and address of the appropriate agency).

(2) Such notice shall be provided in a form that the applicant may retain, either:

(i) On a copy of the application form; or

(ii) On a separate sheet of paper delivered to the applicant at the time application is made, or delivered or mailed to the applicant as soon as practicable thereafter.

(e) *Designation of name.* A creditor shall not prohibit an applicant from opening or maintaining an account in a birth-given first name and surname or a birth-given first name and a combined surname.

§ 202.5 Evaluation of applications.

(a) *Continued ability to repay.* Except as otheriwse provided in this section, a creditor may request and consider any information concerning the probable continuity of an applicant's ability to repay if such information is requested and considered without regard to sex or marital status.

(b) *Information about a spouse or former spouse.*

(1) A creditor may request and consider any information concerning an applicant's spouse (or former spouse under (iv) below) which may be considered about the applicant if:

(i) The spouse will be permitted to use the account; or

(ii) The spouse will be contractually liable upon the account; or

(iii) The applicant is relying on community property or the spouse's income as a basis for repayment of the credit requested; or

(iv) The applicant is relying on alimony, child support or maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(2) A creditor may request the name in which an account is carried if the applicant discloses the account in applying for credit.

(3) Except as permitted in this subsection, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(c) *Alimony, child support and maintenance obligations.* A creditor may ask and consider whether and to what extent an applicant is obligated to make alimony, child support or maintenance payments.

(d) *Alimony, child support and maintenance income.*

(1) If a creditor first discloses to an applicant that income from alimony, child support or maintenance payments need not be revealed if the applicant does not choose to disclose such income in applying for credit, a creditor may inquire whether any income stated in an application is derived from such a source.

(2) Where an applicant chooses to disclose alimony, child support or maintenance payments under § 202.4(c)(3), a creditor shall consider such payments as income to the extent that such payments are likely to be consistently made. Factors which a creditor may consider in determining the likelihood of consistent payments include, but are not limited to, whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor where available to the creditor under the Fair Credit Reporting Act or other applicable laws.

(e) *Discounting income.* A creditor shall not discount the income of an applicant or an applicant's spouse on the basis of sex or marital status. A creditor shall not discount income solely because it is derived from part-time employment, but may consider the probable continuity of such income in evaluating the creditworthiness of an applicant.

(f) *Credit scoring.* A creditor shall not take sex or marital status into account in a credit scoring system or other method of evaluating applications.

(g) *Telephone listing in applicant's name.* A creditor shall not take into account the existence of a telephone listing in the name of an applicant in a credit scoring system or other method of evaluating applications. A creditor may take into account the existence of a telephone in the applicant's home.

(h) *Childbearing.* A creditor shall not request information about birth control practices or childbearing intentions or capability. Nor shall a creditor consider in evaluating the creditworthiness of an applicant aggregate statistics or assumptions relating to the likelihood of any group of persons bearing or rearing children, or for that reason receiving diminished or interrupted income in the future.

(i) *Change of name or marital status.*

(1) Except as set forth in subsection (2) below, in the absence of evidence of inability or unwillingness to repay, a creditor shall not take any of the following actions with respect to a person who is contractually liable on an existing open end account on the basis of a change of name or marital status:

(i) Require a reapplication; or

(ii) Require a change in the terms of the account; or

(iii) Terminate the account.

(2) Where open end credit has been granted to an applicant based on income which is earned solely by the applicant's spouse, a creditor may require a reapplication on the basis of a change in marital status.

(j) *Credit history.* To the extent that a creditor considers credit history in evaluating applicants of similar qualifications for a similar type and amount of credit, a creditor shall include, in evaluating creditworthiness:

(1) The credit history of accounts designated under the requirements of § 202.6 as accounts which the applicant and a spouse are permitted to use or for which both are contractually liable, and, on the applicant's request, any information the applicant may present tending to indicate that such history does not accurately reflect the applicant's willingness or ability to repay; and

(2) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse which an applicant can demonstrate reflects accurately the applicant's willingness or ability to repay.

(k) *Use and retention of prohibited information.* A creditor may not use any information prohibited by the Act or this Part in evaluating applications. Retention of such information in the creditor's files does not violate the Act or this Part where such information was obtained:

(1) From any source prior to June 30, 1976; or

(2) At any time from credit reporting agencies; or

(3) At any time from the applicant or others, without the specific request of the creditor.

(l) *State property laws.* Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this Part.

(m) *Notification of action taken and reasons for denial.*

(1) A creditor shall, within a reasonable time after receiving an application, notify the applicant of action taken upon the application.

(2) A creditor shall provide each applicant who is denied credit or whose account is terminated the reasons for such action, if the applicant so requests.

(3) A creditor may design its own form or methods to satisfy this requirement. An example of a possible form is set forth below.

STATEMENT OF REASONS FOR DENIAL OR TERMINATION OF CREDIT

1. _____Credit application:
   _____not completed.
   _____lack of credit references.
   _____credit reference too new to check.
2. _____Information furnished by:
   XYZ Credit Bureau.
   10 Main Street.
   Anytown, Anystate 00000.
   Phone no. 000–000–0000.
3. _____Employment:
   _____unemployed.
   _____temporary or irregular.
   _____unable to verify.
   _____length of employment.
4. _____Income:
   _____insufficient.
   _____unable to confirm.
   _____information refused.
5. _____Residence:
   _____too short a period.
   _____temporary.
6. _____Other (specify)
   _____
   _____

§ 202.6 Furnishing of credit information.

(a) *Accounts established on or after November 1, 1976.* (1) For every account established on or after November 1, 1976, a creditor shall:

(i) Determine whether the account is one which an applicant's spouse, if any, will be permitted to use or upon which both spouses will be contractually liable, if such accounts are offered by the creditor; and

(ii) Designate any such account to reflect the fact of participation of both spouses.

(2) When furnishing information to consumer reporting agencies or others concerning an account designated under this section, a creditor shall report the designation and furnish any information concerning the account:

(i) To consumer reporting agencies, in a manner which will enable the agencies to provide access to information about the account in the name of each spouse; and

(ii) To recipients other than such agencies, in the name of each spouse.

(b) *Accounts established prior to November 1, 1976.* (1) With respect to any account established prior to and in existence on November 1, 1976, a creditor shall either:

(i) Not later than November 1, 1976, determine whether the account is one which an applicant's spouse, if any, is permitted to use or upon which both spouses are contractually liable; designate any such account to reflect the fact of participation of both spouses; and comply with the requirements of paragraph (a)(2) above; or

(ii) mail or deliver to all applicants, or all married applicants, in whose name the account is carried on the creditor's records the notice set forth below. Such notice may be mailed with a statement or other mailing. All such notices shall be mailed by February 1, 1977. With respect to open end accounts, this requirement may be satisfied by mailing a notice to all accounts for which any statement is sent between November 1, 1976 and February 1, 1977. A creditor may supplement the notice as necessary to permit identification of the account.

NOTICE

CREDIT HISTORY FOR MARRIED PERSONS

The Federal Equal Credit Opportunity Act forbids all creditors from discriminating against any applicant on the basis of sex or marital status in any aspect of a credit transaction. Regulations adopted under the Act give married persons the right to have credit information concerning those credit accounts that they hold or use jointly with a spouse reported to consumer reporting agencies and creditors in the names of both the wife and husband. Accounts of married persons opened before November 1976—even those opened in the names of both spouses—are often reported in only the husband's name. This is generally true regardless of who has been paying the bills or whose income was used to obtain the account. As a result, many married women do not have a credit history in their own names, although their husbands do. If a woman ever needs to obtain credit on her own, for example, when divorced or widowed, a credit history is usually necessary.

If your account(s) with us is a joint account which you share with your spouse or an account(s) in the name of one spouse which the other spouse is authorized to use, you have the right to have credit information concerning it reported in both your name and your spouse's name. If you choose to have credit information concerning your account(s) with us reported in both your name and the name of your spouse, please fill in the statement below and return it to us.

Please note that the Federal regulation provides that your signature below will not make either you or your spouse legally liable for any different or greater debts. It will only request that credit information be reported in both your names.

When you furnish credit information on this account, please report all information concerning it in both our names as follows:

•
(print or type)

Account Number (if any)
(print or type)

Signature of either spouse

(2) After November 1, 1976, a creditor shall, within 90 days of receipt of a request to change the manner in which information is reported to consumer reporting agencies and others, when furnishing information concerning any such account, designate the account to reflect the fact of participation of both spouses. The creditor shall report the designation and furnish any information concerning the account to any recipient other than a consumer reporting agency in the name of each spouse and, when reporting to consumer reporting agencies, in a manner which will enable such agencies to provide access to information about the account in the name of each spouse.

(3) A spouse's signature on a request to change the manner in which information concerning an account is furnished shall not change the legal liability of either spouse upon the account.

§ 202.7 Request for signature of spouse or other person.

(a) *General.* Except as provided in subsections (b) and (c) below, a creditor may not require the signature of a spouse or other person on a credit instrument unless such a requirement is imposed without regard to sex or marital status on all similarly qualified applicants who apply for a similar type and amount of credit.

(b) *Unsecured credit in community property States.* Where a married applicant applies for unsecured credit in a community property State, a creditor may request or require the signature of a non-applicant spouse if:

(i) The applicable State law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to any community property.

(c) *Signatures on certain instruments.* Where a married or separated applicant applies for secured credit, the creditor may require the signature of the applicant's spouse on such instruments as are necessary, under the applicable statutory or decisional law of the State, or are reasonably believed by the creditor to be so necessary, to create a valid lien, pass clear title, waive inchoate rights to property or assign earnings.

EFFECTIVE DATE NOTE: Paragraphs (a) and (b) of § 202.7 become effective Jan. 1, 1976.

Interpretation statement appears at 40 FR 60055, Dec. 31, 1975.

§ 202.8 Separate accounts in relation to state law.

(a) *Separate extension of consumer credit.* Any provision of State law which prohibits the separate extension of consumer credit to each spouse shall not apply in any case where each spouse voluntarily applies for separate credit from the same creditor. In any case where such a State law is pre-empted, each spouse shall be solely responsible for the debt so contracted.

(b) *Finance charges and loan ceilings.* When each spouse separately and voluntarily applies for and obtains a separate account with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States. Permissible loan ceilings under the laws of any State or of the United States shall be construed to permit each spouse to be separately and individually liable up to the amount of the loan ceiling less the amount for which both spouses are jointly liable. For example, in a State which a permissible loan ceiling of $1000, if a married couple were jointly liable for $250, each spouse could subsequently become individually liable for $750.

§ 202.9 Preservation of records.

(a) For a period ending 15 months after the date a creditor gives the applicant notice of action on an application, the creditor shall retain as to each applicant, in original form or a copy thereof:

(1) Any application form and all other written or recorded information used in evaluating an application; and

(2) Any written statement submitted by the applicant alleging discrimination prohibited by the Act or this Part.

(b) For a period ending 15 months after the date a creditor adversely changes the terms or conditions of credit for an account, the creditor shall retain as to each account, in original form or a copy thereof:

(1) Any written or recorded information concerning such change in the terms and conditions; and

(2) Any written statement submitted by the applicant alleging discrimination prohibited by the Act or this Part.

(c) Any creditor which has actual notice that it is under investigation for violation of this Part by an enforcement agency charged with monitoring that creditor's compliance with the Act and this Part, or which has been served with notice of an action filed pursuant to § 202.13 of this Part, shall retain the information required in subsections (a) and (b) above until final disposition of the matter or such earlier time as may be ordered by the agency or court.

§ 202.10 Certain specialized credit.

(a) *General.* Each type of credit referred to in paragraphs (b), (c), (d), and (e) below shall be subject only to § 202.1, the General Rule stated in § 202.2, to

§§ 202.3, 202.4(a), 202.4(b), 202.4(e), 202.11, 202.12, 202.13 and 202.14, and to the other provisions, if any, specified in the applicable subsections of this section. If a credit falls within more than one subsection of this section, all sections of this Part referred to in any such subsections shall apply unless the credit falls within paragraph (d), in which case only the provisions specified in that subsection and this subsection (a) shall apply.

(b) *Incidental credit.* Incidental credit shall be subject to the provisions specified in §§ 202.10(a) and 202.5(h). As used in this Part, incidental credit is credit which meets all of the following requirements:

(1) The credit is not represented by and does not arise from the use of a credit card; and

(2) No finance charge as defined in § 226.4 of this Title (12 CFR 226.4 of Regulation Z), late payment or other fee is or may be imposed other than statutory interest or other costs recoverable in legal proceedings for the collection of the credit; and

(3) There is no agreement by which the credit may be payable in more than four installments.

(c) *Business credit.* Business credit shall be subject to the provisions specified in §§ 202.10(a), 202.5 and 202.7. Section 202.9 shall only apply in those transactions involving an application for credit in the amount of $100,000 or less where the applicant requests in writing that the creditor retain such records. A creditor shall not, on the basis of sex or marital status, fail to act on, or unreasonably delay a decision on, an application for business credit. As used in this Part, business credit is credit granted for business, commercial or agricultural purposes.

(d) *Securities credit.* Securities credit shall be subject to the provisions specified in §§ 202.10(a), 202.5(a), 202.5(c) through 202.5(h), 202.5(j), 202.5(l), 202.5(m), 202.6(a) and 202.9. Section 202.4(e) shall not apply to a securities dealer insofar as the action described is taken to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregating of accounts of spouses for the purpose of determining controlling interests, beneficial ownership or purchase limitations and restrictions. As used in this Part, securities credit is credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or credit extended by lation as a broker or dealer under the Securities Exchange Act of 1934.

(e) *Public utilities credit.* Public utilities credit shall be subject to the provisions specified in § 202.10(a) and §§ 202.5 and 202.7. As used in this Part, public utilities credit is credit extended pursuant to transactions under public utility tariffs involving services provided through pipe, wire or other connected facilities, if the charges for such public utility services, the charges for delayed payment and any discount allowed for early payment are filed with, reviewed by or regulated by an agency of the Federal Government, a State or a political subdivision thereof.

§ 202.11 Miscellaneous provisions.

(a) *Mechanical errors.* If a failure to comply with §§ 202.4(d), 202.5(j), 202.5(m) or 202.6 results from a mechanical, electronic or clerical error made in good faith, it shall not be a violation of the section if the creditor shows by a preponderence of the evidence that at the time of the noncompliance the creditor had established and was maintaining suitable procedures to assure compliance with the section.

(b) *Inconsistent State laws.* Except as provided in § 202.8, this Part alters, affects or preempts only those State laws which are inconsistent with this Part, and then only to the extent of the inconsistency. Such a State law is not inconsistent with this Part if the creditor can comply with the State law without violating this Part.

§ 202.12 Administrative enforcement.

(a) As set forth more fully in Section 704 of the Act, administrative enforcement of the Act and this Part with respect to certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board acting directly or through the Federal Savings and Loan Insurance Corporation, Administrator of the National Credit Union Administration, Interstate Commerce Commission, Civil Aeronautics Board, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission and the Small Business Administration.

(b) Except to the extent that administrative enforcement is specifically committed to other authorities, Section 704 of the Act assigns enforcement of the Act and this Part to the Federal Trade Commission.

§ 202.13 Penalties and liabilities.

(a) Sections 706 (a) through (e) of the Act provide for civil liability for actual and punitive damages against any creditor who fails to comply with the Act and this Part. Section 706(b) places a $10,000 limitation on the amount of punitive damages an aggrieved applicant may seek in an individual capacity and section 706(c) limits a creditor's class action liability for punitive damages to the lesser of $100,000 or 1 percent of the creditor's net worth at the time the action is brought. Section 706(d) provides that an aggrieved applicant may seek equitable relief in the nature of a permanent or temporary injunction, restraining order or other action. Section 706(e) further provides for the awarding of costs and reasonable attorney's fees to an aggrieved applicant who brings a successful action under section 706 (a) through (d).

(b) Section 706(f) relieves a creditor from civil liability resulting from any act done or omitted in good faith in conformity with any rule, regulation or interpretation by the Board of Governors of the Federal Reserve System notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or otherwise determined to be invalid for any reason.

(c) Without regard to the amount in controversy, any action under this Title may be brought in any United States district court or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

§ 202.14 Transition periods.

Except as provided in § 202.6 with respect to that section, the provisions of this Part shall take effect as follows:

(a) Sections 202.1, 202.2, 202.3, 202.4 (a), 202.5 (a), (c), (h), (j), (k), (l), 202.7(c), 202.8, 202.9(c), 202.10, 202.11, 202.12, 202.13 and 202.14 shall take effect on October 28, 1975.

(b) Sections 202.4 (b) and (e), 202.5 (d), (e), (f) and (g) and 202.9 (a) and (b) shall take effect on November 30, 1975.

(c) Sections 202.5 (i) and (m) and 202.7 (a) and (b) shall take effect on January 31, 1976.

(d) Sections 202.4 (c) and (d) and 202.5(b) shall take effect on June 30, 1976.

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